15-800
Judge Day
Revised—
Judge Field & Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~406.~~ 1983

THE CLEVELAND, PAINESVILLE AND ASHTABULA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

FILED DECEMBER 14, 1870.

Dec. D. 1873

SUPREME COURT OF THE UNITED STATES.

No. 406.

THE CLEVELAND, PAINESVILLE AND ASHTABULA RAILROAD COMPANY, PLAINTIFF IN ERROR.

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

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1 Among the records of the court of common pleas of Dauphin County to August term, 1869, No. 413, it is contained as follows, to wit:

Docket entries.

Brewster. Simonton.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
CLEVELAND, PAINESVILLE AND ASHTABULA Railroad Co.

Appeal by defendant from the settlement of the auditor general and state treasurer.

July 15, 1869. Appeal and specifications of objections filed.
July 23, 1869. Bond filed.
And now, to wit, Feb'y 11, 1870, rule for a commission to Cleveland, in the State of Ohio, to take testimony on behalf of defendant on interrogatories filed. Geo. W. Mason nominated as commissioner.
Feb'y 12, 1870. Narr. filed. Same day, defendant pleads "non-assumpsit, and payment with leave."
Feb'y 17, 1870. Cross-interrogatories filed.
March adj'd court, 1870, I. L., March 5, 1870. Deposition of Amasa Stone et al. filed.
March 15, 1870. Trial ordered, jury called. Come, &c., twelve good and lawful men of the county of Dauphin, duly selected, sum-
2 moned, &c., who, being all sworn or affirmed according to law, do say—March 15, 1870—that they find in favor of the plaintiff for two thousand five hundred eleven and $\frac{73}{100}$ dollars, ($2,511 73.)
April 2, 1870. Notes and charge filed. Same day judgment on the verdict.
April 28, 1870. Writ of error from supreme court received and filed.

SEAL OF THE COURT OF COMMON PLEA' OF DAUPHIN COUNTY, PA.

Certified from the record, April 28, 1870.
JOS. H. NISSLEY,
Pro'th'y.

3 *Copy of copy forwarded to treasurer of Company.*

Cleveland, Painsville and Ashtabula R. R. Co. in account with The Commonweaeth of Pennsylvania. Dr.

For tax on loans, per act of May 1, 1868, for year ending Dec. 31, 1868, as per report herewith filed:	
1868. Funded debt, $2,500,000. Interest paid 7 pr. ct.	
Tax 5 per cent. on $\frac{46}{730}$ or $\frac{2555}{9125}$ parts of the total amount of interest paid representing the proportion of the R. R. of said co. within the State of Pennsylvania	$2,336 50
Due Commonwealth	$2,336 50

AUDITOR GENERAL'S OFFICE,
Harrisburg, June 1, 1869.

Settled and entered.

J. F. HARTRANFT,
Auditor General.

TREASURY OFFICE, PA.,
Harrisburg, June 1st, 1869.

Approved.

THO. NICHOLSON,
For R. W. Mackey, State Treasurer.

AUDITOR GENERAL'S OFFICE,
Harrisburg, June 1st, 1869.

I hereby certify that the above is a true copy of the original remaining on file in this department.

Witness my hand and the seal of office, the day and year aforesaid.

{ SEAL OF THE AUDITOR GENERAL'S OFFICE. }

J. F. HARTRANFT,
Auditor General.

4 *Specifications of objection to the settlement.*

In the matter of the account settled June 1, 1869, by the auditor general and state treasurer of the Commonwealth of Pennsylvania against the Cleveland, Painesville and Ashtabula Railroad Company, (now the Lake Shore Michigan Southern Railway Company,) for the amount of taxes claimed to be due from said company under the act of May 1, 1868, entitled "An act to revise, amend, and consolidate the several laws taxing corporations, brokers and bankers" as a tax upon loans.

The said Cleveland, Painesville and Ashtabula Railroad Company, (now the Lake Shore and Michigan Southern Railway Company,) appeals from said settlement of account for said taxes so claimed, to the court of common pleas of Dauphin County, in said Commonwealth, in accordance with the provisions of the acts of assembly in such
5 cases made and provided, and files the following specifications of objections to said settlement:

First. The funded debt of $2,500,000, upon the interest of which the tax of $2,336 50 claimed in said settlement and account, is charged, is represented and evidenced by bonds of said company, which were issued upon the credit, and are secured by mortgage, executed by said company, upon the whole line of its railroad, with the franchises and fixtures thereof, which runs continuously from Erie, in the said State of Pennsylvania, to Cleveland, in the State of Ohio, a distance of 25.5 miles within the former State, and 70.5 miles within the latter; said mortgage being executed and created, under and by virtue of authority granted and conferred by said State of Ohio, as well as by said State of Pennsylvania, and as the portion of said railroad, its
6 franchises and fixtures lying and situated within each and either of said State, and created and made by the authority granted by and derived from each of them respectively, is equally bound by the lien of the whole of said debt, and liable for the whole amount thereof, and there has been no apportionment thereof, no part of said debt or of the interest paid thereon can be lawfully taxed by the State of Pennsylvania, as by so taxing it she would be taxing property and interests beyond her jurisdiction.

Second. A large portion of said bonds are held and owned by non-residents of the State of Pennsylvania, and the interest accruing thereon is due and payable to such non-residents, and is therefore not taxed or taxable, nor intended so to be, by said act of May 1, 1868, nor can
7 the State of Pennsylvania legally tax the same.

Third. The said act of May 1, 1868, in so far as it is made or intended to require any part of the amount or rate of interest contracted to be paid by such company to its bondho'ders or other creditors, who are non-residents of Pennsylvania, to be retained from said bondholders or other creditors, by said company or its officers, or any of them, and to be paid to the state treasurer for the use of the Commonwealth of Pennsylvania, is unconstitutional and void, because repugnant to that part of the 10 section of the first article of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

Fourth. The act of May 1, 1868, does not impose upon said company any obligation or duty to retain, or to retain and pay over, or to
8 pay over to the state treasurer, for the use of the Commonwealth of Pennsylvania, any part of the interest paid or payable by said company to its bondholders or other creditors, nor does it in any way make said company liable to pay the tax charged and claimed in said settlement.

Fifth. The contract for the payment of said bonds, and the interest accruing thereon, was made by said company with the holders of said bonds in the city of Cleveland, in the State of Ohio, and not within the State of Pennsylvania; and said bonds and the interest accruing thereon, are payable in the city of New York, in the State of New York, (except $500,000 thereof, interest on which is payable in Philadelphia, Pa.,) and not within the State of Pennsylvania; and hence
9 the said act of May 1, 1868, in so far as it requires or attempts to require any part of the amount or rate of interest contracted to be paid by said company to said bondholders, to be retained from them by said company or its officers, or any of them, and to be paid to the state treasurer, for the use of the Commonwealth of Pennsylvania, is unconstitutional and void, because repugnant to that part of the 10th section of the first article of the Constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

Sixth. The said act of May 1, 1868, in so far as it is applicable to this settlement, and the facts and circumstances of this case, is unconstitution' and void, because repugnant to the Constitution of the United States.

10 Seventh. Said settlement being for the whole of the year 1868, and being made on the authority of the act passed May 1, 1868, is made without authority of law, and is erroneous, and not binding on the company.

Eight. The officers of said company are not, nor are any of them, either citizens or residents of the State of Pennsylvania, and the legislature of said State cannot require or compel them, or either of them, nor said company to act as tax collectors, or to collect, retain, or pay over to said State for its use taxes due from other persons.

The Cleveland, Painesville and Ashtabula Railroad Company, now the Lake Shore and Michigan Southern Railway Company.

By J. W. SIMONTON,
Attorney.

11 (Endorsement:) The Commonwealth of Pennsylvania vs. The Cleveland, Pain'sville and Ashtabula Railroad Company. No. 413, Aug. term, 1869. Specifications of objection to settlement of auditor general and state treasurer. Filed July 15, 1869. Rec'd at office of auditor general, July 15, 1869.

12 Know all men by these presents that we, The Cleveland, Painesville and Ashtabula, now the Lake Shore and Michigan Southern Railway Company, and George B. Ely and H. B. Payne, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of five thousand dollars, lawful money of the United States, to be paid to the said Commonwealth, her certain attorney or assigns; to which payment well and truly to be made, we, the obligors, do bind ourselves, our respective successors, executors, and administrators, jointly and severally, firmly by these presents, sealed with the corporate seal of said company, and with the seals of said individual obligors, and dated the 13th day of July, A. D. 1869.

The condition of this obligation is such, that whereas the said Cleveland, Pain'sville and Ashtabula Railroad Company, now the Lake Shore and Michigan, has appealed to the court of common pleas of Dauphin County, from the settlement of the auditor general and the treas-
13 urer of said Commonwealth, for tax on loans, per act of May 1, 1868, for the year ending Dec. 31, A. D. 1868, against said company: Now, if said company shall prosecute said appeal with effect, and shall pay all costs and charges which the court or arbitrators shall award, and shall also pay any sum of money which shall appear by the judgment of said court, or award of arbitrators, to be due from said company to said Commonwealth, in said proceeding, then this obligation to be void; otherwise to remain in full force and virtue.

SEAL OF THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY CO.

The Lake Shore and Michigan Southern Railway Co.

By E. B. PHILLIPS,
President.
GEO. B. ELY,
H. B. WAYNE.

Signed, sealed, and delivered in presence of—
N. BARTLETT.

14 (Endorsed as follows, to wit:) The Commonwealth of Pennsylvania vs. The Cleveland, Painesville and Ashtabula R. R. Co. No. 413. August T., 1864. Appeal and bond.

The within bond approved.

JNO. J. PEARSON,
President Judge.

Filed July 23, 1869.

15 In Dauphin County common pleas.

THE COMMONWEALTH OF PENNSYLVANIA *vs.* THE CLEVELAND, PAIN'SVILLE AND ASHTABULA Railroad Company. } No. 413. Aug. T., 1869.

And now, to wit, Feb'y 11, 1870, the defendant in the above-stated

cause enters a rule for a commission to issue to the city of Cleveland, in the State of Ohio, to take the testimony of witnesses to be produced, sworn or affirmed, and examined on behalf of the defendant, and nominates as commissioner to take such testimony George W. Mason, esq.; the same to be taken at No. 7 Harrington Building, Superior street, in said city of Cleveland, and files the following interrogatories to be propounded to said witnesses.

J. C. KUNKEL and
J. W. SIMONTON,
Att'y for Def't.

To J. H. NISSLEY, Esq.,
Prothonotary.

16 Interrogatories to be propounded to Amasa Stone, jr., and George B. Eby, esq., of the city of Cleveland, and State of Ohio, witnesses to be produced, sworn or affirmed, and examined on behalf of defendant in the above-stated case.

First. Are you, or have you heretofore been, an officer of the company defendant in this case? If yea, what position do you or did you hold; for what length of time; and where is the principal office of the company; how long has it been there, and where do you reside?

Second. Are any of the officers of said company residents or citizens of the State of Pennsylvania, or were any of them at any time since December, 1867?

17 Third. State, if you please, the amount of the funded debt of said company defendant, and the nature of the obligations; by what it is represented and secured; and attach a copy of each of said obligations, including mortgages, if any, to your depositions, properly identified.

Fourth. State when said obligations and securities were executed and delivered by said company, and when the contract for the payment of the debt and interest secured and represented thereby was made by said company with the holders thereof, and when said debt and interest are payable.

Fifth. State whether any of said debt is owing to, and any of such obligations are held and owned by, persons who are not residents of nor citizens of the State of Pennsylvania; and if so, how much thereof.

18 Six. State the length of the line of the railroad belonging to said company which, with its franchises and appurtenances, is mortgaged to secure said obligations; how many miles of said railroad is within and how many without the State of Pennsylvania; and whether any, and if so, what part of said obligations are secured exclusively upon any particular part of said railroad, or whether the security of all of them extends over the whole length of the said road.

Seventh. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties in this case, or either of them, or material to the subject of this your examination, or the matter in question in this case? If yea, state the same as fully as if

19 you were particularly interrogated in relation thereto.

J. C. KUNKEL and
J. W. SIMONTON,
Atty's for Def't.

To Hon. F. CARROLL BREWSTER,
Attorney General of the State of Pennsylvania.

SIR: You will please take notice that the foregoing rule and interrog-

11 (Endorsement:) The Commonwealth of Pennsylvania vs. The Cleveland, Pain'sville and Ashtabula Railroad Company. No. 413, Aug. term, 1869. Specifications of objection to settlement of auditor general and state treasurer. Filed July 15, 1869. Rec'd at office of auditor general, July 15, 1869.

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The condition of this obligation is such, that whereas the said Cleveland, Pain'sville and Ashtabula Railroad Company, now the Lake Shore and Michigan, has appealed to the court of common pleas of Dauphin County, from the settlement of the auditor general and the treas-
13 urer of said Commonwealth, for tax on loans, per act of May 1, 1868, for the year ending Dec. 31, A. D. 1868, against said company: Now, if said company shall prosecute said appeal with effect, and shall pay all costs and charges which the court or arbitrators shall award, and shall also pay any sum of money which shall appear by the judgment of said court, or award of arbitrators, to be due from said company to said Commonwealth, in said proceeding, then this obligation to be void; otherwise to remain in full force and virtue.

SEAL OF THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY CO.

The Lake Shore and Michigan Southern Railway Co.

By E. B. PHILLIPS,
President.

GEO. B. ELY,
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The within bond approved.

JNO. J. PEARSON,
President Judge.

Filed July 23, 1869.

15 In Dauphin County common pleas.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE CLEVELAND, PAIN'SVILLE AND ASHTABULA Railroad Company. } No. 413. Aug. T., 1869.

And now, to wit, Feb'y 11, 1870, the defendant in the above-stated

cause enters a rule for a commission to issue to the city of Cleveland, in the State of Ohio, to take the testimony of witnesses to be produced, sworn or affirmed, and examined on behalf of the defendant, and nominates as commissioner to take such testimony George W. Mason, esq.; the same to be taken at No. 7 Harrington Building, Superior street, in said city of Cleveland, and files the following interrogatories to be propounded to said witnesses.

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J. W. SIMONTON,
Att'y for Def't.

To J. H. NISSLEY, Esq.,
Prothonotary.

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Second. Are any of the officers of said company residents or citizens of the State of Pennsylvania, or were any of them at any time since December, 1867?

17 Third. State, if you please, the amount of the funded debt of said company defendant, and the nature of the obligations; by what it is represented and secured; and attach a copy of each of said obligations, including mortgages, if any, to your depositions, properly identified.

Fourth. State when said obligations and securities were executed and delivered by said company, and when the contract for the payment of the debt and interest secured and represented thereby was made by said company with the holders thereof, and when said debt and interest are payable.

Fifth. State whether any of said debt is owing to, and any of such obligations are held and owned by, persons who are not residents of nor citizens of the State of Pennsylvania; and if so, how much thereof.

18 Six. State the length of the line of the railroad belonging to said company which, with its franchises and appurtenances, is mortgaged to secure said obligations; how many miles of said railroad is within and how many without the State of Pennsylvania; and whether any, and if so, what part of said obligations are secured exclusively upon any particular part of said railroad, or whether the security of all of them extends over the whole length of the said road.

Seventh. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties in this case, or either of them, or material to the subject of this your examination, or the matter in question in this case? If yea, state the same as fully as if

19 you were particularly interrogated in relation thereto.

J. C. KUNKEL and
J. W. SIMONTON,
Atty's for Def't.

To Hon. F. CARROLL BREWSTER,
Attorney General of the State of Pennsylvania.

SIR: You will please take notice that the foregoing rule and interrog-

atories have been filed in the office of the prothonotary of said court, and that said commission will issue on the expiration of fifteen days from this date; within which time you will please file cross-interrogatories, and nominate a commissioner, if you think proper to do so.

J. C KUNKEL and
JOHN W. SIMONTON,
Att'y for Defendants.

FEB'Y 11, 1870.

Feb. 11, 1870. Service of copy of above interrogatories and rule accepted.

J. M. McCLURE,
For F. Carroll Brewster, Att'y General.

20 (Endorsed as follows:) The Commonwealth of Pennsylvania vs. The Cleveland, Painesville and Ashtabula R. R. Co. No. 413. Aug. T., 1869. Rule for commission and interrogatories. Filed February 11, 1869.

21 Common pleas of Dauphin County, Pa. August term, 1869.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE CLEVELAND, PAIN'SVILLE, AND ASHTABULA Railroad Company. } No. 413.

Cross-interrogatories to be propounded to the witnesses to be produced, sworn or affirmed, on behalf of the defendants, sur their commission to Cleveland, in the State of Ohio.

First. If, in answer to any of the interrogatories-in-chief you state that you have any knowledge as to the residence of any of the officers of said company, its debt, obligations, securities, the length of its road, mortgage, or any other matter, then please state fully and in detail how you have derived your information, and give all the particulars thereof.

22 Second. Have you had any correspondence with any person or persons in reference to the matters as to which you have been examined in chief? If *I*, attach the same. If letters are not in your possession or under your control, state when they ceased to be so, and attach copies thereof.

F. CARROLL BREWSTER,
For the Commonwealth.

(Endorsed as follows:) The Commonwealth of Pennsylvania vs. The Cleveland, Painesville and Ashtabula R. R. Co. No. 413. August T., 1870. Cross-interrogatories. Filed February 17, 1870.

23 In Dauphin common pleas, No. 413. Aug. term, 1869.

DAUPHIN COUNTY, *ss:*

The Commonwealth of Pennsylvania, by her attorney general, complains of the The Cleveland, Painesville and Ashtabula Railroad Company, of a plea, that they render unto the said Commonwealth the sum of one hundred thousand dollars, lawful money of the United States, which they owe to and unjustly detain from her. For that whereas the

said defendants, on the first day of June, A. D. '69, (1869,) at the county of Dauphin aforesaid, were indebted to the said plaintiff, in the sum of two thousand three hundred and thirty-six & $\frac{50}{100}$ dollars, lawful money of the United States, on an account examined, adjusted, settled, and signed by the auditor general of this Commonwealth, and duly entered in the books of his office, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the same last aforesaid, is due and owing the said plaintiff from the said defendants, with interest thereon at the rate of twelve per centum per per annum, from and after the expiration of 60 days from the day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, for tax on capital stock as per act of May 1, A. D. 1868, for the year ending December 31st, A. D. 1868 which said account was, on the 1st day of June, A. D. 1869, submitted to, revised, and approved by the state treasurer, and a copy thereof, within thirty days thereafter, sent by the auditor general, under his hand and seal of office, to the said defendants, and which yet remains in full force against the said defendants and unappealed from. Whereby, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth, in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, parcel of the said sum above demanded. And being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff, on request, the last-mentioned sum of money:

And whereas, also, the said defendants, on the day and year in the first count first mentioned, at the county aforesaid, were indebted to the said plaintiff in a certain further sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth, in the said account in the first count mentioned, for money then and there had and re-
24 ceived by the said defendants, to and for the use of the said plaintiff. And, also, a certain further sum of money to wit, the sum last aforesaid, on an account settled and entered by the auditor general of this Commonwealth, against the said defendants, on the day and year in the first count mentioned, for tax on capital stock, and approved by the state treasurer on the day and year in the first count mentioned:

And whereas, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money respectively to the said plaintiff on request. Yet the said defendants have disregarded their said promises, and although often requested so to do have not, as yet, paid any of the said several sums of money or any part thereof. To the damage of the said plaintiff of one hundred thousand dollars, and therefore she brings suit, &c.,

J. M. McCLURE,
For F. Carroll Brewster, Attorney General.

(See endorsement.)

25 (Indorsed:) No. 413, Aug. term, 1869. Commonwealth of Pennsylvania vs. The Cleveland, Pain'sville and Ashtabula R. R. Co. *Company.* Narr. Filed Feb'y 12, 1869.

26 In the court of common pleas of Dauphin County, Pa. August term, 1869.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE CLEVELAND, PAINESVILLE AND ASHTABULA Railroad Company. } 413.

And now, to wit, February 12, 1870, defendant pleads non assumpsit, and payment with leave, &c.

KUNKEL AND SIMONTON,
Att'ys for Defendant.

27 In the court of common pleas of Dauphin County, Pennsylvania. August T., 1869.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
THE CLEVELAND, PAINESVILLE AND ASHTABULA R. R. Co. } No. 413. Appeal.

Notes of trial and charge of the court.

Plea. Non assumpsit and payment with leave, &c.

Act of Pennsylvania, approved May 1, 1868, sections 11, 12, 13, as follows to wit:

28 Laws of Pennsylvania, act of May 1, 1868, (Pamphlet Laws, page .)

SECTION XI. *Be it enacted, &c.*, That the president, treasurer, or cashier of every company, except bank or savings institution, incorporated under the laws of this Commonwealth, doing business in this State, which pays interest to its bondholders or other creditors, shall, before the payment of the same, retain from said bondholder or creditors a tax of five per centum upon every dollar of interest paid as aforesaid; and shall pay over the same semi-annually, on the first days of July and January in each and every year, to the state treasurer for the use of the Commonwealth; and every president, treasurer, or cashier, as aforesaid, shall annually, on the 31 day of each December, or within 30 days thereafter, report to the auditor general, under oath or affirmation, stating the entire amount of interest paid by said corporation to said creditors during the year ending on that day; and thereupon the au-
29 ditor general and state treasurer shall proceed to settle an account with said corporation as other accounts are now settled by law; and in the settlement of said accounts the persons aforesaid shall be allowed the same commission or compensation as is now allowed by law to county treasurers; and in case the said president, treasurer, or cashier shall neglect or refuse to make the report required by this section within sixty days after the time specified, he shall forfeit to the State the amount of his commission for such failure or neglect: *Provided*, That the principal sums from the interest of which the said tax is deducted shall not be assessed and taxed for State purposes in the valuation of personal property, or returned by county commissioners to the board of revenue commissioners.

SECTION XII. That in settlement of all accounts for taxes due

30 the Commonwealth under the preceeding sections of this act by corporations or individuals, the auditor general and state treasurer shall charge interest upon the balance or balances found due the Commonwealth by such corporations or individuals at the rate of 12 per centum per annum from the time said taxes became due and payable to the time of the settlement of the same; and all balances due the Commonwealth by the corporations or individuals aforesaid on accounts settled agreeably to the provisions of the act of March 30, 1811, or any other act of assembly, shall bear interest at the rate of 12 per centum per annum, until the same are paid: *Provided*, That the payment of interest as aforesaid shall not relieve said corporations or individuals from any of the penalties prescribed for neglect or refusal to furnish reports to the auditor general.

31 SECTION XIII. That the auditor general and state treasurer, or any agent appointed by them, are hereby authorized to examine the books and papers of any corporation, association, company, private banker or broker, to verify the accuracy of any return made to them or either of them under the provisions of this act.

J. M. Forster sworn. Report of the corporation read, dated May 3, 1869, per jurat, as follows, to wit:

32 *Report of the debt, and interest paid thereon, of the Cleveland, Pain's-ville & Ashtabula (now the Lake Shore) Railway Company for the year ending December 31st, 1868, with the date and amount of the several payments during the period aforesaid.*

Total bonded debt $2,500,000, $\frac{2}{5}\frac{5}{5}$ parts of which is $667,539.
7% int. on do. is... .... 4,673 00

The various mortgages securing the above indebtedness of the company is upon the entire line of road from Erie, Pa., to Cleveland, O., The interest on the bonds is paid in New York City. We have no means of knowing where the bonds are held, but are of the opinion that but a very small proportion are held by citizens of Penn'a.

1868.

Jan. 1.	Paid	semi-annual	int.	on	$1,500,000	.....	52,500 00
July 1.	"	"	"	"	1,500,000	.....	52,500 00
Ap'l 1.	"	"	"	"	1,000,000	.....	35,000 00
Oct. 1.	"	"	"	"	1,000,000	.....	35,000 00

GEO. B. ELY, *Tr's.*

STATE OF OHIO, *Cuyahoga Co., ss:*

Personally appeared before me, a notary public in and for the county aforesaid, Geo. B. Ely, treasurer of the Cleveland, Pain'sville, & Ashtabula R. W. Co., now Lake Shore R'y Company, who, being duly according to law, did depose and say that the above report is just and true, according to the best of his knowledge and belief.

Sworn to and subscribed before me this 3d day of May, A. D. 1869.
[SEAL.] N. BARTLETT,
Notary Public.

33 Settlement read, dated June 1, 1869. Amount, $2,336 50.
Five per cent. on interest and three mills on principal; about 25½ miles in Pennsylvania; taxation in proportion.

34 *Copy of copy forwarded to treasurer of company.*

Cleveland, Painesville, and Ashtabula R. R. Co. in account with the Commonwealth of Pennsylvania, Dr.

For tax on loans, per act of May 1, 1868, for year ending Dec. 31, 1868, as per report herewith filed.

1868. Funded debt		$2,500,000
Interest paid, 7 p'r cent.		
Tax, 5 p'r c't. on $46,730, or $\frac{25}{95}$:$\frac{5}{5}$ parts of the total amount of interest paid, representing the proportion of the R. R. of said Co. within the State of Pennsylvania		$2,336 50
Due Commonwealth		$2,336 50

AUDITOR GENERAL'S OFFICE,
Harrisburg, June 1, 1869.

Settled and entered.

J. F. HARTRANFT,
Auditor General.

TREASURY OFFICE, PA.,
Harrisburg, June 1, 1869.

Approved.

THO'S NICHOLSON,
For R. W. Mackey, State Treasurer.

AUDITOR GENERAL'S OFFICE,
Harrisburg, June 1, 1869.

I hereby certify that the above is a true copy of the original remaining on file in this department.
Witness my hand and the seal of office the day and year aforesaid.

J. F. HARTRANFT,
Auditor General.

35 Plaintiff closes.

Specifications on appeal filed July 15, 1869, read, to wit:

In the matter of the account settled June 1, 1869, by the auditor general and state treasurer of the Commonwealth of Pennsylvania, against the Cleveland, Painesville and Ashtabula Railroad Company, (now the Lake Shore and Michigan Southern Railway Company,) for the amount of taxes claimed to be due from said company under the act of May 1, 1868, entitled "An act to revise, amend, and consolidate the several laws taxing corporations, brokers, and bankers," as a tax upon loans.

The said Cleveland, Painesville and Ashtabula Railroad Company, (now the Lake Shore and Michigan Southern Railway Company,)
36 appeals from said settlement of account for said taxes so claimed, to the court of common pleas of Dauphin County, in said Commonwealth, in accordance with the provisions of the act of assembly in such cases made and provided, and files the following specifications of objections to said settlement.

First. The funded debt of $2,500,000, upon the interest of which the

tax of $2,336 50 claimed in said settlement and account is represented and evidenced by bonds of said company, which were issued upon the credit, and are secured by mortgage executed by said company upon the whole line of its railroad, with the franchises and fixtures thereof, which runs continuously from Erie, in the said State of Pennsylvania, to Cleveland, in the State of Ohio, a distance of 25.5 miles within
37 the former State, and 70.5 miles within the latter; said mortgage being executed and created under and by virtue of authority granted and conferred by said State of Ohio, as well as by said State of Pennsylvania, and as the portion of said railroad, its franchises and fixtures, lying and situated within each and either of said States, and created and made by the authority granted by, and derived from, each of them respectively, is equally bound by the lien of the whole of said debt and liable for the whole amount of said debt, and there has been no apportionment thereof; no part of said debt, or of the interest paid thereon, can be lawfully taxed by the State of Pennsylvania, as by taxing it she would be taxing property and interests beyond her jurisdiction.

38 Second. A large portion of said bonds are held and owned by non-residents of the State of Pennsylvania, and the interest accruing thereon is due and payable to such non-residents, and is therefore not taxed or taxable, nor intended so to be, by said act of May 1, 1868, nor can the State of Pennsylvania tax the same.

Third. The said act of May 1, 1868, in so far as it is made, or intended to require any part of the amount or rate of interest contracted to be paid by said company to its bondholders or other creditors, who are non-residents of Pennsylvania, to be retained from said bondholders or other creditors, by said company or its officers, or any of them, and to be paid to the state treasurer for the use of the Commonwealth of Penn-
39 sylvania, is unconstitutional and void, because repugnant to that part of the 10th section of the first article of the Constitution of the United States which declares that no State shall pass any law impairing the obligation of contracts.

Fourth. The act of May 1, 1868, does not impose upon said company any obligation or duty to retain, or to retain and pay over, or to pay over to the state treasurer, for the use of the Commonwealth of Pennsylvania, any part of the interest paid or payable by said company to its bondholders or other creditors, nor does it in any way make said company liable to pay the tax charged and claimed in said settlement.

Fifth. The contract for the payment of said bonds, and the interest accruing thereon, was made by said company with the holders
40 of said bonds in the city of Cleveland, in the State of Ohio, and not within the State of Pennsylvania; and said bonds and interest accruing thereon and payable in the city of New York, in the State of New York, (except $500,000 thereof, interest on which is payable in Philadelphia,) and not within the State of Pennsylvania; and hence the said act of May 1, 1868, in so far as it requires, or attempts to require, any part of the amount or rate of interest contracted to be paid by said company to said bondholders, to be retained from them by said company or its officers, or any of them, and to be paid to the said state treasurer for the use of the Commonwealth of Pennsylvania, is unconstitutional and void, because repugnant to that part of the 10th
41 section of the first article of the Constitution of the United States, which declares that no State shall pass any law impairing the obligations of contracts.

Sixth. The said act of May 1, 1868, in so far as it is applicable to this

settlement, and the facts and circumstances of this case, is unconstitutional and void, because repugnant to the Constitution of the United States.

Seventh. Said settlement being for the whole of the year 1868, and being made on the authority of the act passed May 1, 1868, is made without authority of law, and is erroneous.

Eighth. The officers of said company are not, nor are any of them, either citizens or residents of the State of Pennsylvania, and the
42 legislature of said State cannot require or compel them or either of them, nor said company, to act as tax collectors, or to collect, retain, or pay over to said State, or for its use, taxes due from other persons.

The Cleveland, Painesville and Ashtabula Railroad Company, (now the Lake Shore and Michigan Southern Railway Company.)

By J. W. SIMONTON.

(Endorsed:) Filed July 15, 1868, in Dauphin common pleas. Received at office of aud. general, July 15, 1869.

43 Laws of Pennsylvania, act of 1854—Pamphlet Laws, page 588—authorizes the company to come into the State. Certain conditions named, to wit:

AN ACT relating to the Sunbury and Erie Railroad Company, and the Cleveland, Painesville and Ashtabula Railroad Company.

SECTION 1. *Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, and it is hereby enacted by the authority of the same*, That the Cleveland, Painesville and Ashtabula Railroad Company, incorporated under an act of the general assembly of the State of Ohio, passed the 18 day of February, A. D. 1848, entitled "An act to incorporate the Cleveland, Painesville and Ashtabula Railroad Company," and an act supplementary thereto, passed December 10, A. D. 1850, be, and they are hereby, authorized to construct and use a railroad with one or more tracks commencing at and in the city of Erie, thence extending southwestwardly by the most practicable
44 route on or along the Franklin Canal Railroad to a point on the State line of Ohio, where it may connect with the Cleveland, Painesville and Ashtabula Railroad, subject to the provisions of the act regulating railroad companies, passed the 19th day of February, A. D. 1849; and they be, and are hereby, authorized to connect their road with any railroad or railroads legally authorized to come to, or to lay a road within, the limits of the city of Erie: *Provided*, that all such connexions shall wholly cause so soon as the Sunbury and Erie Railroad Company shall have a track or track' open for use leading into said city, unless they shall also make a connexion therein with said Sunbury & Erie Railroad, at the depots of said last-named company.

SECTION 2ND. That the said Cleveland, Painesville and Ashtabula Railroad be, and they are hereby, authorized and required to purchase the railroad now constructed from the city of Erie to the Ohio State line, and all the right or interest of the Franklin Canal Company,
45 or any other parties in and to the same, with its appurtenances and the right of way, and all other rights and property connected therewith; and shall also purchase any shares of the said original Franklin Canal Company's stock at par, and pay the interest and principal on all bonds of said company according to their tenor. And thereafter the said Cleveland, Painesville and Ashtabula Railroad Com-

pany may use and enjoy the said railroad and its appurtenances, with a full release of any and all rights and claims of the Commonwealth thereto or therein; and the said Franklin Canal Company is authorized to make such sale and transfer to said Cleveland, Painesville and Ashtabula Railroad Company.

SECTION 3D. That the said Cleveland, Painesville and Ashtabula Railroad Company shall extend the track or tracks of their road in all respects except grades to the main track from a point west of Liberty
street, being the western boundary of the city of Erie, north-
46 eastwardly by the most practicable route to the harbor of Erie at or near the depot grounds of the Sunbury and Erie Railroad Company, and have the same opened and ready for use within two years, or sooner, if the said Sunbury and Erie or any other railroad, coming from an eastwardly direction, shall have one or more tracks completed to the said harbor: *Provided*, that the Sunbury and Erie Railroad Company shall grant such use of their depot grounds as may be agreed upon by the parties, and that the city of Erie shall grant free the right of way over and along such public streets or public grounds as may be required for the track or tracks of said road to the harbor.

SECTION 4TH. That all the privileges and immunities granted to the said Cleveland, Painesville and Ashtabula Railroad Company in and by this act are granted upon the following terms and conditions, namely:
First. The said Cleveland, Painesville, and Ashtabula Railroad
47 Company shall make such connection between their railroad and that of the Sunbury and Erie Railroad Company at or near the city of Erie, as may be best adapted to the safe, cheap, and ready transferring of cars, passengers, baggage, and freight from one road to the other so soon as the western division of the said Sunbury and Erie Railroad shall be finished; and that so soon as the said Sunbury and Erie Railroad Company shall have laid down a track of road from Sunbury to Erie, then and thereafter the said Cleveland, Painesville and Ashtabula Railroad Company shall run their freight and passenger trains to the depot of the Sunbury and Erie Railroad Company; and from then and thereafter shall not grant, furnish, or allow to any company whose railroad shall terminate at or pass through or near the city of Erie, nor to any company or companies whose road or roads shall connect
with or be contiguous to such road terminating at or passing
48 through or near the city of Erie any facilities, privileges, and advantages, which are not granted and furnished to the Sunbury and Erie Railroad Company, nor give or furnish or permit to be given or furnished by any agent or by any person or persons, company or companies, using their road, directly or indirectly, any inducement of any kind whatever to any party to travel or to send or forward property or mail-matter in either direction on or over any railroad so terminating at or passing through or near the city of Erie, or connecting or contiguous therewith in preference to traveling, or sending, or forwarding such property or mail-matter on or over the Sunbury and Erie Railroad; and all passengers property and mail-matter passing over the said Sunbury and Erie Railroad, or destined to pass over the same, shall be received and despatched by the said Cleveland, Painesville and Ashtabula Railroad Company with all proper and reasonable speed and despatch: Provided: That the Commonwealth truly reserves the right at any time
that may be deemed necessary to protect her interest, to impose
49 such taxes on the Cleveland, Painesville and Ashtabula Railroad Company, as may be imposed by any general law upon all the railroads of this Commonwealth.

Second. That said Cleveland, Pain'sville and Ashtabula Railroad Company shall, before exercising any of the rights or franchises hereby granted, subscribe for five thousand shares of the capital stock of the Sunbury and Erie Railroad Co., to be paid for in the bonds of the said Cleveland, Pain'sville & Ashtabula R. R. Co., as hereinafter authorized to be issued, bearing seven per centum per annum; interest payable half yearly, the principal payable in twenty years, to be secured by a mortgage of all their property, rights, and franchises, and which shall be a first lien or mortgage on that part of their property in Pennsylvania, and on the rights and franchises granted or to be granted by this act; said mortgage to be executed to such trustee as shall be satisfactory to the said Sunbury and Erie R. R. Co.; the payment in bonds on account of such subscription to be made, and stock issued therefor, in the same proportions, and at the same times that the city of Philadelphia *of Philadelphia* shall make their payments on their second subscription of ten thousand shares to the capital stock of the said Sunbury and Erie R. R. Co., which said five thousand shares of stock, unless otherwise agreed to by both parties, shall be inalienable, until the maturity of the bonds given in payment therefor, and so declared on the face of the certificate of the same; and in all the elections or stock votes of the Sunbury and Erie R. R. Co., 1,667 shares, and no more, may be voted upon by the Cleveland, Painesville and Ashtabula R. R. Co.

Third. That at least three of the directors of the said Cleveland, Painesville and Ashtabula R. R. Co. shall be citizens of the Commonwealth of Pennsylvania.

SECTION 5TH. That the Cleveland, Pain'sville and Ashtabula R. R. Co. be, and they are hereby, authorized to issue their bonds in sums not less than $100 each, bearing interest at the rate of seven per centum per annum, payable half-yearly, to be secured by a mortgage or deed of trust of all their property, rights, and franchises to the amount of 500,000 dollars, and the said Sunbury and Erie Railroad Company are hereby authorized to receive said bonds at par in payment, as before provided for the subscription to their stock hereinbefore authorized and directed to be made.

SECTION 6TH. That if the said Cleveland, Painesville and Ashtabula R. R. Co. shall in any respect knowingly and intentionally refuse or neglect to perform and comply with all and singular the terms and conditions hereinbefore recited and imposed, the fact of such refusal or neglect having been adjudged by a court of competent jurisdiction, then and in such case all the rights, privileges, powers, and immunities granted to said company by this act or intended so to be, shall forthwith cease and determine: Provided, that nothing herein contained shall be construed to release the Cleveland, Painesville and Ashtabula R. R. Co. from liability to the Sunbury and Erie R. R. Co., by reason of such refusal or neglect, but the said Sunbury and Erie R. R. Co. may, from time recover from the Cleveland, Painesville and Ashtabula R. R. Co. such damages as they may sustain therefrom.

SECTION 7TH. That immediately upon the passage of this act the Susquehanna and Erie R. R. Co. may assign and transfer to the Sunbury and Erie R. R. Co. all their estate, effects, rights, liberties, and franchises; and from and after such transfer and assignment, duly executed, under their corporate seal, the said Sunbury and Erie R. R. Co. shall become vested with all the estate and effects of the said Susquehanna and Erie R. R. Co., and shall and may exercise and enjoy all the rights, privileges, and franchises of said company in their own name, and, in

addition to those now enjoyed or possessed by themselves, as fully as though the same had been directly granted to the said Sunbury and Erie R. R. Co.: Provided, that if the Sunbury and Erie R. R. Co. shall, under the rights and franchises transfered to them by the said Susquehanna and Erie R. R. Co., or under any other legislative
53 authority, construct a railroad leading from the city of Erie to the Ohio State line, parallel with the Cleveland, Painesville and Ashtabula R. R. Co., or shall connect with any other such railroad, then, and in such case, the said Sunbury and Erie R. R. Co. shall pay to the said Cleveland, Pain'sville and Ashtabula R. R. Co. so much as may have been paid on account of the said subscription of 5,000 shares of stock, either in cash or in the bonds aforesaid, at the option of said Sunbury and Erie R. R. Co., and thereupon the said Cleveland, Painesville and Ashtabula R. R. Co. shall deliver up the certificates of stock issued to them, to be cancelled forthwith; and thenceforth the said Cleveland, Painesville and Ashtabula R. R. Co. shall be, and they are hereby, authorized to exercise all the rights and privileges hereinbefore granted or intended so to be, freed and discharged from all and singular the terms and conditions hereinbefore imposed and provided.

54 SECTION 8. That before exercising any of the rights and immunities hereby granted to the Cleveland, Pain'sville and Ashtabula R. R. Co., and to the Sunbury and Erie R. R. Co., respectively, either company shall give to the other notice in writing, under their respective corporate seals, that they accept this act and agree to become bound by all the provisions and conditions therein contained, and immediately upon either of said companies giving such notice to the other, then such company shall forthwith be, and become, entitled to all the benefits, rights, privileges, and immunities granted by this act; subject however to the performance of the terms, provisions, and conditions therein contained.

E. B. CHASE,
Speaker H. of R.
M. McCASLIN,
Speaker of the Senate.

Approved the 5 day of May, 1854.

W'M BIGLER.

55 Acts of Ohio (Pamphlet Laws, volume 46; general laws, vol. 46, p. 40,) regulating railroads, 13th section, gives power to borrow money as follows, to wit:

SECTION XIII. Such company shall have power to borrow money on the credit of the corporation, not exceeding its authorized capital stock, at a rate of interest not exceeding seven per cent. per annum, and may execute bonds or promisory notes therefor, and to secure the payment thereof may pledge the property and income of such company, provided that the value and security of any liens, mortgage, or the stock held in or against such company by the State or the city of Cincinnati, shall not thereby be injured or otherwise impaired.

Ohio local laws, vol. 46, p. 184, passed 1848, as follows, to wit:

56 AN ACT to incorporate the Cleveland, Painesville and Ashtabula Railroad Company. (Ohio Local Laws, vol. 46, page 184.)

SECTION I. *Be enacted by the general assembly of the State of Ohio*, That John W. Allen, John B. Waring, Charles Hickok, and Sergeant Currier, of Cuyahoga County; Lord Stirling, O. A. Crary, E. T. Wilder,

Aaron Wilcox, D. R. Page, P. P. Sanford, W. W. Branch, of Lake County; Asaph Turner, George G. Gillet, Edwin Harrison, Frederick Carlisle, Robert Lyon, and Zaphner Lake, of Ashtabula County, are hereby created a body corporate, with perpetual succession, by the name of the Cleveland, Painesville and Ashtabula Railroad Company, with authority to construct a railroad from the city of Cleveland, in Cuyahoga County, by the way of Painesville, in Lake County, through Ashtabula County to some point on the Pennsylvania State line in said county of Ashtabula, with power to connect with any railroad
57 incorporated by the State of Pennsylvania, and to their road into the State of Pennsylvania, to any point authorized by the general assembly of said State.

SECTION II. The capital stock of said company may consist of any amount not exceeding fifteen hundred thousand dollars.

SECTION III. Said company shall have all the powers and be subject to all the restrictions and provisions of the act "regulating railroad companies," passed February (11th,) eleventh, one thousand eight hundred and forty-eight, (1848.)

58 Acts of Ohio, General Laws, vol. 49, p. 94 to , as follows, to wit:

AN ACT regulating railroad companies. (Ohio General Laws, vol. 49, p. 94.)

SECTION VI. The directors of any railroad company are hereby authorized to sell or negotiate the bonds or notes issued by said company, or received by it in payment of subscription to its capital stock or otherwise, at such times and at such places, either within or without this State, and at such rates as, in their opinion, will best advance the interests of such company; and, if such bonds or notes are thus sold at a discount, such sale shall be as valid, in every respect, as if sold at their par value.

Ohio Local Laws, vol. 49, p. 489, to negotiate bonds, as follows, to wit:

59 AN ACT to authorize the Cleveland, Painesville and Ashtabula Railroad Company to negotiate their bonds, and for other purposes. (Ohio Local Laws, vol. 48, p. 489.)

SECTION I. *Be it enacted by the general assembly of the State of Ohio*, That the Cleveland, Painesville and Ashtabula Railroad Company be, and is hereby, authorized and empowered to sell or negotiate the notes or bonds of the company issued by such company, at such times and at such places, either within or without this State, and at such rates and at such prices as may be deemed best fitted to advance the interests of the company; and, if such bonds or notes are thus sold at a discount, such sales shall be as valid, in every respect, as if they were sold at their par value.

SECTION II. Said company shall have power to lend its money or credit in such amounts as may be deemed expedient, to any com-
60 pany constructing or authorized to construct a railroad in the State of Pennsylvania, and whose line may form an extension of the line of road belonging to the Cleveland, Painesville and Ashtabula Railroad Company, and for this purpose said Cleveland, Painesville and Ashtabula Railroad Company may guarantee the payment of any notes or bonds of such Pennsylvania company, and such guarantee

shall be valid and binding; and may also hold and own, by subscription or transfer, any number of shares of the capital stock of such company.

SECTION III. Said Cleveland, Painesville and Ashtabula Railroad Company shall have power to alter the gauge of their road, if deemed expedient, so as to conform to the gauge of the New York and Erie Railroad, or to the gauge of any other railroad with which it may connect at the west line of the State of Pennsylvania.

61 Ohio Local Laws, vol. 51, p. 286, relates to sale of bonds, as follows, to wit:

AN ACT relating to the sale of bonds of railroad companies, and to increase the numbers of directors (Ohio Laws, vol. 51, p. 286.)

SECTION I. *Be it enacted by the general assembly of the State of Ohio*, That the directors of any railroad company, authorized to borrow money and to execute bonds or promissory notes therefor, shall be, and they are hereby, authorized to sell, negotiate, mortgage, or pledge such bonds or notes, as well as any notes, bonds, scrip, or certificate for the payment of money or property which such company may have heretofore received as donations or in payment of subscriptions to the capital stock, or for other dues of such company, at such times and in such places, either within or without the State, and at such rates
62 and for such prices as, in the opinion of said directors, will best advance the interests of such company; and, if such notes or bonds are thus sold at a discount, such sale shall be as valid, in every respect, and such securities as binding for the respective amounts thereof, as if they were sold at their par value.

Same vol., p. 332; act regulates railroad mortgages:

AN ACT to regulate railroad mortgages. (Ohio Laws, vol. 51, p. 332.)

SECTION I. *Be it enacted by the general assembly of the State of Ohio*, That in all cases where any railroad company, organized or hereafter to be organized under any law of this State, or ow'ing any real and personal estate therein, which has, by virtue of any special provisions in its charter of the act "regulating railroads," passed February
63 11, 1848, or of the act "to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1, 1852, authority to borrow money, and to secure the payment thereof to pledge the property and income of such company, every such company may execute a deed of mortgage or other instrument in writing for the purpose of securing the payment of the loan of money so made on the notes, bonds, or other evidence of indebtedness that may be so issued by said company therefor, which said mortgage may include the personal as well as the real property of said company.

Same vol., p. 411, authorizes bonds to be issued and stock increased, as follows, to wit:

AN ACT authorizing railroad companies to issue bonds, and to increase their capital
64 stock in certain cases.

SECTION 1. *Be it enacted by the general assembly of the State of Ohio*, That any railroad company heretofore, or that may be hereafter, incorporated under the laws of this State, contemplating the laying of a double track, may issue its bonds, convertible or otherwise, bearing any rate of interest not exceeding seven per centum per annum to any amount not exceeding half of its capital stock, and sell the same at such

times and at such places within or without this State, and at such rates as the directors of the company may deem best for its interests, and if such bonds are sold at a discount they shall be as valid in every respect as if sold at their par value; and such company may secure such
65 bonds by mortgage on its property or otherwise, and may, at its option, increase its capital stock in an amount equal to the bonds issued as aforesaid.

The foregoing laws filed of record March 15, 1870.

Depositions of Amasa Stone, j'r, president of the company, and deposition of George Ely, read. Bonds proved, issued in Cleveland, placed in New York, as follows, to wit:

65½ DAUPHIN COUNTY, *ss:*

SEAL OF THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYVANIA. } The Commonwealth of Pennsyvania to George W. Mason, esq., greeting:

Know ye that, in confidence of your prudence and fidelity, we have appointed you, and by these presents, do give unto you full power and authority, in pursuance of an order made in our court of common pleas for the county of Dauphin, in a certain cause there pending, wherein the Commonwealth of Pennsylvania is plaintiff, and the Cleveland, Painesville and Ashtabula R. R. Co. defendent, to call before you witnesses at a certain day and place, by you for that purpose to be appointed, all and every person and persons who may be named to you as well on the part of the plaintiff as on the part of the defendant or either of them, as witnesses, touching the premises mentioned in the interrogatories hereto annexed, and reduce their testimony to writing, and when you shall have so done, you are to send the same before us in our court of common pleas aforesaid, together with the interrogatories and this writ, under your hands and seals, or of such of you shall act therein.

In testimony whereof we have caused the seal of our said court to be hereunto affixed. Witness my hand at Harrisburg, the 21st day of February, A. D. eighteen hundred and seventy.

JOS. H. NISSLEY,
Prothonotary.

66 In Dauphin County common pleas, Aug. T. 1869.

THE COMMONWEALTH OF PENNSYVANIA
vs.
THE CLEVELAND, PAINESVILLE AND ASHTABULA Railroad Company. } No. 413.

And now, to wit, on Feb'y 11, 1870, the defendant in the above-stated case enters a rule for a commission to issue to the city of Cleveland, in the State of Ohio, to take testimony of witnesses to be produced, sworn or affirmed, and examined on behalf of the defendant, and nominate as commissioner to take such testimony George W. Mason, the same to be taken at Nos. 5 & 6 Harrington Building, Superior street, in said city of Cleveland, and files the following interrogatories to be propounded to the said witnesses.

J. C. KUNKEL and
J. W. SIMONTON,
Att'ys for Defendant.

To JOS. H. NISSLEY, Esq.,
Prothonotary.

67 Interrogatories to be propounded to Amasa Stone, j'r, and George B. Ely, esq's, of the city of Cleveland, and State of Ohio, witnesses to be produced, sworn or affirmed, and examined on behalf of defendant in the above-stated case.

First. Are you or have you heretofore been an officer of the company in this case? If yea, what position do you or did you hold; for what length of time; and where is the principal office of said company; how long has it been there; and where do you reside?

Second. Are any of the officers of said company residents or citizens of the State of Pennsylvania, or were any of them at any time since December, 1867?

Third. State, if you please, the amount of the funded debt of
68 said company defendant, and the nature of the obligations by which it is represented and secured, and attach a copy of each of said obligations, including mortgages, if any, to your deposition, properly identified.

Fourth. State when said obligations and securities were executed and delivered by said company, and where the contract for the payment of the debt and interest secured and represented thereby was made by said company with the holders thereof, and when said debt and interest are payable.

Fifth. State whether any of said debt is owing to, and any of such obligations are held and owned by, persons who are not residents of nor citizens of the State of Pennsylvania; and if so, how much thereof.

Sixth. State the length of the line of railroad belonging to said
69 company, which, with its franchises and appurtenances, is mortgaged to secure said obligations; how many miles of said railroad is within and how many without the State of Pennsylvania; and whether any, and if so, what part of said obligations are secured exclusively upon any particular part of said railroad, or whether the security of all of them extends over the whole length of said road.

Seventh. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties in this case, or either of them, or material to the subject of this your examination or the matter in question in this case? If yea, state the same as fully as if you were particularly interrogated in relation thereto.

J. C. KUNKEL and
J. W. SIMONTON,
Att'ys for Def't

70 Hon. F. CARROLL BREWSTER,
Attorney General of the State of Pennsylvania.

SIR: You will please take notice that the foregoing rule and interrogatories have been filed in the office of the prothonotary of said court, and that said commission will issue on the expiration of fifteen days from this date, within which you will please file cross-interrogatories and nominate a commissioner, if you think proper so to do.

J. C. KUNKEL and
J. W. SIMONTON,
Att'y for Def't.

FEB. 11, 1870.

Feb. 11, 1870. Service of copy of above interrogatories and rule accepted.

J. M. McCLURE,
For F. Carroll Brewster, Att'y General.

71 *Cross-Interrogatories.*

Common pleas of Dauphin County, August T 1869.

THE COMMONWEALTH OF PENNSYLVANIA,
vs.
THE CLEVELAND, PAINESVILLE AND ASHTABULA R. R. Co. } No. 413.

Cross-interrogatories to be propounded to the witnesses to be produced, sworn or affirmed, and examined on behalf of the defendants, sur their commission to Cleveland, in the State of Ohio.

First. If, in answer to any of the interrogatories-in-chief, you state that you have any knowledge as to the residence of any of the officers of said company, its debt, obligations, securities, the length of its road, mortgages, or any other matter, then please state fully and in detail how you have derived your information, and give all the particulars
72 thereof.

Second. Have you had any correspondence with any person or persons in reference to the matters as to which you have been examined in chief? If so, attach the same. If the letters are not in your possession, or under your control, state when they ceased to be, and attach copies thereof.

F. CARROLL BREWSTER,
For the Commonwealth.

Filed Feb'y 17, 1870.

SEAL OF THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENN'A. } Certified from the record, February 21, 1870.

JOS. H. NISSLEY,
Prothonotary.

[U. S. 5-ct. stamp.]

73 Depositions of Amasa Stone, jr., and George B. Ely, taken before me as a commissioner at office Nos. 5 & 6 Harrington Building, Superior street, in the city of Cleveland, county of Cuyahoga, and State of Ohio, on the 24th. 25th, and 26th days of February, A. D. 1870, between the hours of nine a. m. and four p. m., of said day, under and in pursuance of the commission hereunto annexed, and to be read in evidence on behalf of the defendants in the action pending in the court of common pleas of Dauphin County, in said Commonwealth of Pennsylvania, wherein the said Commonwealth is plaintiff, and the Cleveland, Painesville and Ashtabula Railroad Company is defendant, as in said commission is specified.

AMASA STONE, jr., of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and saith as follows, to wit:
74 In answer to interrogatory first, examination-in-chief, he says:

Answer first. I have been an officer of the company which is defendant in this case. I was its president from the year 1857 to the year 1869. The principal office of said company is in Cleveland, Ohio, and has been there since the year 1850. I reside in the city of Cleveland, Ohio.

In answer to interrogatory second, he says: Some of the directors of

said company are residents of Pennsylvania, and have been since Dec. 1867. There are not now nor have there been any other officers resident in that State.

In answer to interrogatory third, he says: The amount of the funded debt of said company is as follows: In 1854 a mortgage debt was issued to the Sunbury and Erie R. R. Co. in five hundred bonds of one thousand dollars each. This mortgage extended over the whole line of
75 the road from Erie to Cleveland. In the year 1859 a mortgage debt was issued for the sum of one million dollars, covering the whole line of the road; the number of bonds issued was two thousand, being for five hundred dollars each. Another mortgage was issued Oct. 1, 1867, for the sum of one million dollars; these bonds are of different denominations, the largest being for the sum of five thousand dollars each. I have not the means of furnishing a copy of the mortgages and obligations.

In answer to interrogatory fourth, he says: Said obligations and securities were executed and delivered in the city of Cleveland, State of Ohio; also, the contract for the payment of the debt and interest, was made in the said city of Cleveland. The principal and interest of the
76 first issue of five hundred thousand dollars was made payable in the city of Philadelphia, Pennsylvania. The principal and interest of the other two issues for one million each, was made payable in the city of New York, and State of New York.—(GEORGE W. MASON, *Commissioner.*)

In answer to *the* interrogatory fifth, he says: A large portion of said debts are owing to persons residing in the States of Ohio and New York and in New England. So far as I know there is none held or owned by any person or persons who are residents or citizens of the State of Pennsylvania. My opinion and belief is that a small proportion of said debt, but not equal to one-tenth of the whole, is held and owned by residents of Pennsylvania.

In answer to interrogatory sixth, he says: The length of the line of the railroad belonging to the said co. is ninety-five and one-half miles,
77 and all of the mortgages cover the entire length thereof, of which twenty-five and one-half miles are in the State of Pennsylvania, and seventy miles are in the State of Ohio.

In answer to interrogatory seventh, he says: I know of nothing further which seems to be material to the case.

In answer to the cross-interrogatories, the witness says:

First answer. I am personally acquainted with all the officers of the company, and as an officer of the company had something to do with the issue of all the obligations and securities referred to. As to the length of the road, I was one of the contractors in the State of Ohio, and was a consulting engineer in the State of Pennsylvania. I derive
78 my knowledge as to the residence of the holders of the bonds, in the first place, from having had personal acquaintance with more than half of them when they received them from the company. I was then its president. Most of the bonds were issued to stockholders, and they received them in proportion to their stock in the company. In the next place, I derive my information from conversation and correspondence with these holders of bonds. Inquiries have been and often are made of me by the holders, respecting them. There are now, to my knowledge, more than $200,000 of these bonds held and owned at Cleveland, Ohio.

In answer to cross-interrogatory second, he says: I have had no cor-

71 *Cross-Interrogatories.*

Common pleas of Dauphin County, August T 1869.

THE COMMONWEALTH OF PENNSYLVANIA,
vs.
THE CLEVELAND, PAINESVILLE AND ASHTABULA R. R. Co. } No. 413.

Cross-interrogatories to be propounded to the witnesses to be produced, sworn or affirmed, and examined on behalf of the defendants, sur their commission to Cleveland, in the State of Ohio.

First. If, in answer to any of the interrogatories-in-chief, you state that you have any knowledge as to the residence of any of the officers of said company, its debt, obligations, securities, the length of its road, mortgages, or any other matter, then please state fully and in detail how you have derived your information, and give all the particulars
72 thereof.

Second. Have you had any correspondence with any person or persons in reference to the matters as to which you have been examined in chief? If so, attach the same. If the letters are not in your possession, or under your control, state when they ceased to be, and attach copies thereof.

F. CARROLL BREWSTER,
For the Commonwealth.

Filed Feb'y 17, 1870.

SEAL OF THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENN'A. } Certified from the record, February 21, 1870.

JOS. H. NISSLEY,
Prothonotary.

[U. S. 5-ct. stamp.]

73 Depositions of Amasa Stone, jr., and George B. Ely, taken before me as a commissioner at office Nos. 5 & 6 Harrington Building, Superior street, in the city of Cleveland, county of Cuyahoga, and State of Ohio, on the 24th. 25th, and 26th days of February, A. D. 1870, between the hours of nine a. m. and four p. m., of said day, under and in pursuance of the commission hereunto annexed, and to be read in evidence on behalf of the defendants in the action pending in the court of common pleas of Dauphin County, in said Commonwealth of Pennsylvania, wherein the said Commonwealth is plaintiff, and the Cleveland, Painesville and Ashtabula Railroad Company is defendant, as in said commission is specified.

AMASA STONE, jr., of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and saith as follows, to wit:
74 In answer to interrogatory first, examination-in-chief, he says:

Answer first. I have been an officer of the company which is defendant in this case. I was its president from the year 1857 to the year 1869. The principal office of said company is in Cleveland, Ohio, and has been there since the year 1850. I reside in the city of Cleveland, Ohio.

In answer to interrogatory second, he says: Some of the directors of

said company are residents of Pennsylvania, and have been since Dec. 1867. There are not now nor have there been any other officers resident in that State.

In answer to interrogatory third, he says: The amount of the funded debt of said company is as follows: In 1854 a mortgage debt was issued to the Sunbury and Erie R. R. Co. in five hundred bonds of one thousand dollars each. This mortgage extended over the whole line of
75 the road from Erie to Cleveland. In the year 1859 a mortgage debt was issued for the sum of one million dollars, covering the whole line of the road; the number of bonds issued was two thousand, being for five hundred dollars each. Another mortgage was issued Oct. 1, 1867, for the sum of one million dollars; these bonds are of different denominations, the largest being for the sum of five thousand dollars each. I have not the means of furnishing a copy of the mortgages and obligations.

In answer to interrogatory fourth, he says: Said obligations and securities were executed and delivered in the city of Cleveland, State of Ohio; also, the contract for the payment of the debt and interest, was made in the said city of Cleveland. The principal and interest of the
76 first issue of five hundred thousand dollars was made payable in the city of Philadelphia, Pennsylvania. The principal and interest of the other two issues for one million each, was made payable in the city of New York, and State of New York.—(GEORGE W. MASON, *Commissioner.*)

In answer to *the* interrogatory fifth, he says: A large portion of said debts are owing to persons residing in the States of Ohio and New York and in New England. So far as I know there is none held or owned by any person or persons who are residents or citizens of the State of Pennsylvania. My opinion and belief is that a small proportion of said debt, but not equal to one-tenth of the whole, is held and owned by residents of Pennsylvania.

In answer to interrogatory sixth, he says: The length of the line of the railroad belonging to the said co. is ninety-five and one-half miles,
77 and all of the mortgages cover the entire length thereof, of which twenty-five and one-half miles are in the State of Pennsylvania, and seventy miles are in the State of Ohio.

In answer to interrogatory seventh, he says: I know of nothing further which seems to be material to the case.

In answer to the cross-interrogatories, the witness says:

First answer. I am personally acquainted with all the officers of the company, and as an officer of the company had something to do with the issue of all the obligations and securities referred to. As to the length of the road, I was one of the contractors in the State of Ohio, and was a consulting engineer in the State of Pennsylvania. I derive
78 my knowledge as to the residence of the holders of the bonds, in the first place, from having had personal acquaintance with more than half of them when they received them from the company. I was then its president. Most of the bonds were issued to stockholders, and they received them in proportion to their stock in the company. In the next place, I derive my information from conversation and correspondence with these holders of bonds. Inquiries have been and often are made of me by the holders, respecting them. There are now, to my knowledge, more than $200,000 of these bonds held and owned at Cleveland, Ohio.

In answer to cross-interrogatory second, he says: I have had no cor-

respondence with any person or persons in reference to the matter as to which I have been examined in chief.

And further this deponent saith not.

(S'g'd) AMASA STONE, JR.

GEORGE W. MASON,
Commissioner.

79 GEORGE B. ELY, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposeth and saith as follows, to wit:

In answer to interrogatory first, examination-in-chief, he says:

Answer first. I have been an officer of the company, defendant, in this case. I was its secretary from the year 1852 to the year 1869. I was also its treasurer from the year 1854 to the year 1869. The principal office of said company was in Cleveland, Ohio, from the time of the organization of said company until 1869. I reside in the city of Cleveland, Ohio.

In answer to *the* interrogatory second, he says: Some of the directors of said company are residents of Pennsylvania, and have been since Dec., 1867. There are no other officers of said company resident in the State of Pennsylvania, nor have there been.

80 In answer to interrogatory third, he says: The funded debt of said company is as follows: In 1854 the company issued its bonds for five hundred thousand dollars ($500,000) to the Sunbury and Erie R. R. Company, secured by a mortgage upon the entire road from Erie to Cleveland. Said bonds mature in the year 1874. In the year 1859 the company issued its bonds for one million dollars, ($1,000,000,) which bonds were distributed pro rata to the stockholders, and were secured by a mortgage given to S. J. Andrews. In 1867 the company issued its bonds for one million ($1,000,000) dollars, secured by a mortgage given to myself on the entire road from Erie, Pennsylvania, to Cleveland, Ohio. Said bonds were also distributed pro rata to the stockholders. A copy of each of said mortgages I attach to my deposition, marked "A," "B," and "C," a copy of one of the bonds corresponding to each of said mortgages I hereby attach to my deposition, marked "D,"

81 "E," and "F."

In answer to interrogatory fourth, he says: Said obligations and securities were executed and delivered in the city of Cleveland, State of Ohio; also, the contract for the payment of the debt and interest was made in the said city of Cleveland. The principal and interest of the first issue of five hundred thousand dollars ($500,000) was made payable in the city of Philadelphia, Pennsylvania. The principal and interest of the other two issues for one million dollars ($1,000,000) each were made payable in the city of New York, in the State of New York.

In answer to interrogatory fifth, he says: The first issue of five hundred thousand dollars ($500,000) of bonds was made direct to the

82 Sunbury and Erie R. R. Co., a large portion of which issue are held and owned by persons residing in the States of Ohio and New York and the New England States. I do not know of any of this issue being held or owned by any person or persons resident in the State of Pennsylvania. The last two issues of bonds were made directly to the stockholders, most of whom are residents of Ohio, New York, and the New England States. At the time of the distribution of these bonds there were some stockholders who were residents of Pennsylvania. I do not think one-thirtieth of the stock was held or owned by residents of Pennsylvania.

In answer to interrogatory sixth, he says: The length of the line of the railroad belonging to said company is ninety-five and one half miles, and all of the mortgages cover the entire length thereof, of which
83 twenty-five and one half miles are in the State of Pennsylvania, and seventy miles are in the State of Ohio.

In answer to interrogatory seventh, he says: I know of nothing to add to what I have already said which seems to me material.

In answer to the cross-interrogatories, the witness says:

First answer. I derive my information as to the residence of the officers of said company, its debts, obligations, the length of its road, &c., from being an officer of the company and a personal acquaintance with many persons holding the bonds, and especially with the stockholders, to whom they were distributed by me. The residences of the stockholders were known from the register of the company, and to whom circulars were frequently addressed, and to which they uniformly responded.

In answer to cross-interrogatory second, he says: I have had no correspondence with any person or persons in reference to the
84 matter as to which I have been examined in chief. And further this deponent saith not.

GEORGE B. ELY.

GEORGE W. MASON,
Commissioner.

I, George W. Mason, commissioner, do hereby certify that Amasa Stone, j'r, and George B. Ely, were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions, by them respectively subscribed as above set forth, were reduced to writing by myself, in the presence of the witnesses respectively, and were respectively subscribed by the said witnesses in my presence; and were taken at the time mentioned in this deposition, and at the place directed in the enclosed commission; that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

85 In testimony whereof I have hereunto subscribed my name as commissioner appointed to take the above depositions.

GEORGE W. MASON,
Commissioner.

86 "A."

This indenture, made the day of in the year of our Lord one thousand eight hundred and fifty-four, between the Cleveland, Painesville, and Ashtabula Railroad Company, a corporation duly constituted as such by the laws of the States of Ohio and Pennsylvania, of the first part, and Robert Ewing, of the city of Philadelphia, of the second part:

Whereas the parties of the first part, pursuant to the terms of the statute of the said State of Ohio, incorporating them, and other statutes of said State and of the Commonwealth of Pennsylvania, affecting them, are authorized to subscribe to the capital stock of the Sunbury and Erie Railroad Company, five thousand shares of one hundred dollars each, amounting to the sum of five hundred thousand dollars, and to pay for said shares in the bonds of the party of the first part to like amount; and whereas said party of the first part, in pursuance of such authority, have made the aforesaid subscription, and have resolved to execute and

deliver to the treasurer of the said Sunbury and Erie Railroad Company their bonds in the sums of one thousand dollars each, to the amount of five hundred thousand dollars, to wit, five hundred several bonds, payable on the first day of July, in the year of our Lord one thousand eight hundred and seventy-four, for one thousand dollars each, and bearing interest at the rate of seven per centum per annum, payable semi-annually on the first days of January and July in each year ensuing the date hereof, until the principal shall be paid, to be on an equality, so far as regards security for the repayment thereof by these presents, notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate signed by the said party of the second part:

Now, therefore, this indenture witnesseth: That the said parties of the first part, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them at the sealing and delivery hereof in hand paid by the said Robert Ewing, of the city of Philadelphia, the receipt whereof is hereby acknowledged, have granted bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said Robert Ewing, his successors in the trust hereby created and asssigns, all the following present property of the said parties of the first part, that is to say: Their railroad, extending from the city of Erie, in Pennsylvania, to the city of Cleveland, in Ohio, including the right of way and land occupied thereby, together with the superstructure, and all rails and other materials used therein or procured therefor; bridges, viaducts, culverts, fences, depot grounds and buildings erected thereon; engines, tenders, cars, tools, materials, machinery, and contracts, now subsisting, and all right therein; tolls, income, and all other personal property and any right thereto or interest therein, together with the tolls or income to be had or levied therefrom, and all franchises, rights, and privileges of the said parties of the first part of, in, to, or concerning the same: To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust and assigns, upon the following trust, that is to say: That, in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest of the said bonds, at any time when the same may become due and payable, according to the tenor thereof, when demanded, then, after sixty days from such default, upon request of the holder of such bond, the said party of the second part, his successors in said trust and assigns, shall and may enter into and take possession of all or any part of said premises; and, as the attorney-in-fact or agent of the said parties of the first part, by himself, or agents, or substitutes, duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, and additions thereto; and, after deducting the expenses of such use, repairs, alterations and additions thereto, apply the proceeds thereof to the payment of the principal and interest of all of said bonds there remaining unpaid; or the said party of the second part, his successors in said trust and assigns, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid, shall, cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction in the State of Ohio, or city of Philadelphia or New York, giving at least forty days' notice of the time, place, and terms of such sale, and of the specific property to be sold, by publishing the same in two newspapers of good circula-

tion in each of the cities of New York, Philadelphia, and Cleveland, and wherever else required by law, and execute to the purchaser or purchasers thereof, a good and sufficient deed of conveyance in fee-simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, or claim in or to said premises so sold, or any part thereof, and said trustee shall, after deducting from the proceeds of said sale the costs and expenses of managing such property, and of such sale, apply so much of the proceeds as may be necessary to the satisfaction and payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part, it being hereby expressly understood that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor any injunction or stay of proceedings, or any process to be applied for or obtained by them to prevent such entry or sale as aforesaid.

And the said parties of the first part hereby covenant for the consideration aforesaid to execute and deliver any further reasonable and necessary conveyance of the premises, or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the objects hereof; and it is hereby mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds, in manner aforesaid, the estate hereby granted to said party of the second part shall be void, and the right to the premises hereby conveyed shall revert to and revest in the said parties of the first part without any acknowledgment of satisfaction, reconveyance, reëntry, or other act; and it is also further mutually agreed that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof and shall not be responsible for the acts of any agent employed by him, where such agent is selected with reasonable discretion, and that said party of the second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises, or any part thereof, or manage the same; and it is further mutually agreed that, in case of the death, mental incapacity, or resignation of the said party of the second part, or his successors in said trust, the said parties of the first part shall, or, in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may, apply to the supreme court of the State of Ohio, sitting in any county in said State, or to the supreme court of the Commonwealth of Pennsylvania, to appoint a new trustee to supply his place, and thereupon such new trustee shall become vested, for the purposes aforesaid, with all the rights and interest hereby conveyed to or vested in the said party of the second part without any further assurance or conveyance for the same; but, if the same shall be necessary, both or either of the parties hereto shall execute any necessary release or conveyance for those purposes.

In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed and the same to be subscribed by their president, and the said party of the second part has set his hand and seal the day and year first above-written.

GEO. B. ELY.

Signed, sealed, and delivered in presence of—

Exhibit "A," attached to the deposition of George B. Ely.

GEORGE W. MASON,
Commissioner.

(Indorsed:) Exhibit "A" attached to—

87 "B."

This indenture, made the first day of January, in the year one thousand eight hundred and fifty-nine, between the Cleveland, Painesville and Ashtabula Railroad Company, a corporation duly constituted as such by the laws of the States of Ohio and Pennsylvania, of the first part, and Sherlock J. Andrews, of the city of Cleveland, Ohio, of the second part:

Whereas the party of the first part pursuant to the statute of the State of Ohio, incorporating it, and other statutes of said State and of the Commonwealth of Pennsylvania, affecting it, has constructed a railroad extending from the city of Cleveland, in the State of Ohio, to the city of Erie, in the State of Pennsylvania; and, whereas, said first party need further means for the purpose of bridging and filling up ravines for the construction of a second track, for increasing their equipment, and for other purposes, to the extent of one million dollars. And in order to raise such required means, and to secure payment therefor, or repayment thereof, have resolved to execute during the next three successive years, certain bonds, not exceeding two thousand in number, each for the sum of five hundred dollars, payable on the first day of January, in the year one thousand eight hundred and eighty, and bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July in each year ensuing the date hereof, until the principal shall be paid. All of said bonds to be on an equality so far as regards security for the repayment thereof, by these presents; notwithstanding the same may be issued at different times, each of said bonds being authenticated by a certificate, signed by said party of the second part:

Now, therefore, this indenture witnesseth: That the said parties of the first part, in order to secure the payment of said bonds and interest, and in consideration of the sum of one dollar to them, at the sealing and delivery hereof, in hand paid by the said Sherlock J. Andrews, of the city of Cleveland, the receipt whereof is hereby acknowledged, have granted, bargained, sold, transferred, and conveyed, and by these presents do grant, bargain, sell, transfer, and convey to the said Sherlock J. Andrews, his successors, in the trust hereby created and assigns, all the following present property of the said parties of the first part, that is to say: Their railroad extending from the city of Erie, in Pennsylvania, to the city of Cleveland, in Ohio, including the right of way and land occupied thereby, together with the superstructure, and all rails and other materials used therein, or that may be procured therefor; bridges, viaducts, culverts, fences, depot grounds and buildings erected, or to be erected thereon; engines, tenders, cars, tools, materials, machinery, and contracts now subsisting, and all right therein; tolls, income, and all other personal property, and any right thereto, or interest therein, together with all the tolls or income to be had or levied therefrom, and all franchises, rights, and privileges of the said parties of the first part, of, in, to, or concerning the same: To have and to hold the said premises, and every part thereof, with the appurtenances, unto the said party of the second part, his successors in said trust and assigns, upon the fol-

lowing trusts, that is to say: That in case the said parties of the first part shall fail to pay the principal, or any part thereof, or any of the interest on said bonds, at any time when the same may become due and payable according to the tenor thereof when demanded, then after sixty days from such default, upon request of the holder of such bond, the said party of the second part, his successors in said trust and assigns, shall and may enter into, and take possession of all or any part of said premises, and as the attorney-in-fact or agent of the said parties of the first part, by himself or agents, or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, or additions thereto; and, after deducting the expenses of such use, repairs, alterations, and additions thereto, apply the proceeds thereof to the payment of the principal and interest of all said bonds there remaining unpaid; or the said party of the second part, his successors in said trusts and assigns, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid, shall cause the said premises, or so much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction, in the State of Ohio, or city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and the specific property to be sold, by publishing the same in two newspapers in general circulation in each of the cities of New York and Cleveland, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee-simple for the same, which shall be a bar against the parties of the first part, their successors and assigns, and all persons claiming under them, of all right, interest, or claim in or to said premises so sold, or any part thereof, and said trustee shall, after deducting from the proceeds of said sale the costs and expenses of managing such property and of such sale, apply so much of the proceeds as may be necessary to the satisfaction and payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the parties of the first part, it being hereby expressly understood, that in no case shall any claim or advantage be taken of any valuation, appraisement, or extension laws by the said parties of the first part, nor shall any injunction, stay of proceedings, or any other process be applied for or obtained by said company to prevent such entry or sale as aforesaid.

And it is further agreed, that at any sale as aforesaid, of the whole or any part of the premises by said trustee, he may, if he thinks it for the interest of the bondholders, become a bidder and purchaser of the same, provided he shall not bid or pay therefor a sum that shall exceed the amount due and to become due to said bondholders, and upon such purchase, the premises which shall be sold, shall be thenceforth held in trust for such bondholders, in proportion to their respective debts or claims against said corporation.

And the said parties of the first part hereby covenant, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the premises, or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the objects hereof; and it is hereby mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds, in manner aforesaid, the estate hereby granted to the said party of the second part, shall be void, and the right to the premises hereby conveyed shall revert to and revest in the said parties of the first part, without any acknowl-

edgment of satisfaction, reconveyance, reëntry, or other act by said party of the second part; and it is also further mutually agreed, that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by him, where such agent is selected with reasonable discretion, and that said party of the second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises, or any part thereof, or manage the same; and it is further mutually agreed, that, in case of the death, mental incapacity, or resignation of the said party of the second part, or his successors in said trust, the said parties of the first part shall, or in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may apply to the supreme court of the State of Ohio, or the district court, sitting in any county in said State, or to the supreme court of the Commonwealth of Pennsylvania, to appoint a new trustee to supply his place, and thereupon such new trustee shall become vested for the purposes aforesaid, with all the rights and interests hereby conveyed to or vested in the said party of the second part, without any further assurance or conveyance for the same; but, if the same shall be necessary, both or either of the parties hereto shall execute any necessary releases or conveyances for those purposes.

In witness whereof the parties of the first part have caused their corporate seal to be hereto affixed, and the same to be subscribed by their president, and the said party of the second part has set his hand and seal hereto the day and year above written.

GEORGE B. ELY.

Signed, sealed, and delivered in the presence of—

Exhibit "B" attached to the deposition of George B. Ely.

GEORGE W. MASON,
Commissioner.

88 "C."

This indenture, made the first day of October, in the year one thousand eight hundred and sixty-seven, between the Cleveland, Painesville and Ashtabula Railroad Company, a corporation duly constituted as such by the laws of the States of Ohio and Pennsylvania, of the first part, and Geo. B. Ely, of the city of Cleveland, Ohio, of the second part:

Whereas the party of the first part, pursuant to the statute of the State of Ohio incorporating it, and other statutes of said State, and of the Commonwealth of Pennsylvania, affecting it, has constructed a railroad extending from the city of Cleveland, in the State of Ohio, to the city of Erie, in the State of Pennsylvania; and, whereas, said first party has, in the building of bridges and station-houses, for the construction of second track, and the Ashtabula branch, for the increase of equipment and other purposes, used of the net earnings of the road about one million dollars; and, in order to distribute to the stockholders said amount so used, have resolved to execute its bonds to the amount of one million dollars, to be dated October 1st, 1867, payable on the first day of October, one thousand eight hundred and ninety-two, and bearing interest at the rate of seven per cent. per annum, payable semi-annually, on the first days of October and April in each year ensuing the date hereof, until the prin-

cipal shall be paid. Each of said bonds being authenticated by a certificate signed by said party of the second part:

Now, therefore, this indenture witnesseth: That the said party of the first part, in order to secure the payment of said bonds and interest; and in consideration of the sum of one dollar to it, at the sealing and delivery hereof, in hand paid by the said George B. Ely, of the city of Cleveland, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred, and conveyed, and by these presents, does grant, bargain, sell, transfer, and convey to the said George B. Ely, his successors in the trust hereby created and assigns, all the following present property of the said party of the first part, that is to say: Its railroad extending from the city of Erie, in Pennsylvania, to the city of Cleveland, in Ohio, including the right of way and land occupied thereby, together with the superstructure and all rails and other materials used therein, or that may be procured therefor; bridges, viaducts, culverts, fences, depot grounds and buildings erected, or to be erected thereon; engines, tenders, cars, tools, materials, machinery and contracts now subsisting, and all right therein; tolls, income, and all other personal property and any right thereto, or interest therein, together with all the tolls or income to be had or levied therefrom, and all franchises, rights, and privileges of the said party of the first part of, in, to, or concerning the same: To have and to hold the said premises and every part thereof with the appurtenances, unto the said party of the second part, his successors in said trust and assigns, upon the following trusts, that is to say: That in case the said party of the first part shall fail to pay the principal, or any part thereof, or any of the interest on said bonds, at any time when the same may become due and payable according to the tenor thereof when demanded, then, after sixty days from such default, upon request of the holder of such bond, the said party of the second part, his successors in said trust and assigns, shall and may enter into, and take possession of all or any part of said premises, and as the attorney-in-fact or agent of the said party of the first part, by himself or agents or substitutes duly constituted, have, use, and employ the same, making from time to time all needful repairs, alterations, or additions thereto; and, after deducting the expenses of such use, repairs, alterations, and additions thereto, apply the proceeds thereof to the payment of the principal and interest of all said bonds then remaining unpaid; or the said party of the second part, his successors in said trusts and assigns, at his or their discretion, may, or, on the written request of the holders of at least one-half of the bonds then unpaid, shall, cause the said premises or so much thereof as shall be necessary to pay and discharge the principal and interest of all such of said bonds as may then be unpaid as aforesaid, to be sold at public auction, in the State of Ohio or city of New York, giving at least forty days' notice of the time, place, and terms of such sale, and the specific property to be sold, by publishing the same in two newspapers in general circulation in each of the cities of New York and Cleveland, and wherever else required by law, and execute to the purchaser or purchasers thereof a good and sufficient deed of conveyance in fee-simple for the same, which shall be a bar against the party of the first part, its successors and assigns, and all persons claiming under it of all right, interest or claim in or to said premises so sold, or any part thereof, and said trustee shall, after deducting from the proceeds of said sale the costs and expenses of managing such property, and of such sale apply so much of the proceeds as may be necessary to the satisfaction and payment of said principal and interest due or unpaid on said bonds, and shall restore the residue thereof to the party of the first part, it being hereby

expressly understood, that in no case shall any claim or advantage be taken of any valuation, appraisement or extension laws, by the said party of the first part, nor shall any injunction, stay of proceedings, or any other process be applied for or obtained by said company to prevent such entry or sale as aforesaid.

And it is further agreed, that at any sale as aforesaid, of the whole or any part of the premises by said trustee, he may, if he thinks it for the interest of the bond-holders, become a bidder and purchaser of the same, provided he shall not bid or pay therefor a sum that shall exceed the amount due and to become due to said bondholders, and upon such purchase, the premises which shall be sold shall be thenceforth held in trust for such bondholders in proportion to their respective debts or claims against said corporation.

And the said party of the first part hereby covenants, for the consideration aforesaid, to execute and deliver any further reasonable and necessary conveyance of the premises or any part thereof, to the said party of the second part, his successors in said trust and assigns, for more fully carrying into effect the objects hereof; and it is hereby mutually agreed, and these presents are upon this express condition, that on payment of the principal and interest of said bonds, in manner aforesaid, the estate hereby granted to the said party of the second part, shall be void, and the right to the premises hereby conveyed shall revert to and revest in the said party of the first part, without any acknowledgment of satisfaction, reconveyance, reëntry, or other act by said party of the second part; and it is also further mutually agreed, that the said party of the second part, his successors in said trust and assigns, shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts of any agent employed by him, where such agent is selected with reasonable discretion, and that said party of the second part, his successors in said trust or assigns, shall be entitled to receive proper compensation for every labor or service performed by him in the discharge of his trust, in case he shall be compelled to take possession of said premises, or any part thereof, or manage the same; and it is further mutually agreed, that in case of the death, mental incapacity, or resignation of the said party of the second part, or his successors in said trust, the said party of the first part shall, or in their default to take proceedings therefor for thirty days, the holders of a majority of said bonds may apply to the supreme court of the State of Ohio, or the district court, sitting in any county in said State, or to the supreme court of the Commonwealth of Pennsylvania, to appoint a new trustee to supply his place, and thereupon such new trustee shall become vested for the purposes aforesaid, with all the rights and interests hereby conveyed to, or vested in the said party of the second part, without any further assurance or conveyance for the same; but, if the same shall be necessary, both or either of the parties hereto shall execute any necessary releases or conveyances for those purposes.

In witness whereof, the party of the first part has caused its corporate seal to be hereto affixed, and the same to be subscribed by its president, and the said party of the second part has set his hand and seal hereto, the day and year above written.

GEORGE B. ELY.

Signed, sealed and delivered in presence of—

Exhibit "C" attached to deposition of George B. Ely.

GEORGE W. MASON,
Commissioner.

89 "D."

UNITED STATES OF AMERICA—THE STATE OF OHIO.

Cleveland, Painesville and Ashtabula Railroad Company.

No. 105.] [$1,000 00.

The Cleveland, Painesville and Ashtabula Railroad Company acknowledge themselves to owe to the treasurer of the Sunbury and Erie Railroad Company, one thousand dollars, which sum said Cleveland, Painesville and Ashtabula Railroad Company promise to pay to the said treasurer or to such person being the holder hereof, as said treasurer shall by general or special indorsement hereon authorize to receive such payment, at the office of the Sunbury and Erie Railroad Company, in the city of Philadelphia, on the first day of July, in the year of our Lord one thousand eight hundred and seventy-four; and also the interest thereon at the rate of seven per cent. per annum, semi-annually, on the first day of each January and of each July ensuing the
90 date hereof, until the principal shall be paid, on the presentation of the proper annexed interest warrants at said office.

In testimony whereof, the said Cleveland, Painesville and Ashtabula Railroad Company have hereunto caused to be affixed their corporate seal and these presents to be subscribed by their president this first day of July, A. D. 1854.

WILLIAM CASE,
President.

I, Robert Ewing, hereby certify that the Cleveland, Painesville and Ashtabula R. R. Co., have, by deed dated the first day of July, A. D. 1854, conveyed to me their railroad extending from the city of Cleveland, in the State of Ohio, to the city of Erie, in the State of Pennsylvania, with all their property, rights, and franchises, in trust for the use and benefit of the holders of their bonds of similar tenor as
91 the foregoing issued and to be issued, to the *to the* amount of five hundred thousand dollars, with power to take possession of, use, and sell the same or any part thereof, in case of sixty days' default in paying the interest or principal of said obligations, or any of them as by reference to said mortgage or deed of trust, which I have caused to be recorded in all the counties in which said railroad is located will more fully appear; and I further certify that the foregoing is one of the bonds referred to and secured by said mortgage.

ROBERT EWING, *Trustee.*

PHILADELPHIA, *Dec.* 1, 1854.

Exhibit "D" attached to deposition of George B. Ely. Coupons were also attached to this bond not here copied.

GEORGE B. ELY.

GEORGE W. MASON,
Commissioner.

92 "E."

UNITED STATES OF AMERICA.

STATES OF OHIO [cut] AND PENNSYLVANIA.

Cleveland, Painesville & Ashtabula R. R. Co.

No. .] [$500.

The Cleveland, Painesville & Ashtabula Railroad Company acknowledges itself indebted and bound to in the sum of five hundred dollars, in lawful money of the United States of America, to be paid to the said or assigns, in the city of New York, on the first day of January, in the year one thousand eight hundred and eighty, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first days of January and July in each year, on the presentation and surrender, as the same fall due, of the annexed coupons, or interest warrants. And said company further agrees, that this obligation and all rights and benefits arising therefrom may be transferred on its books, in person or by power of attorney.

In witness whereof the said company has hereto caused to be affixed its corporate seal, and these presents to be subscribed to by its president, this first day of January, 1859.

President.

(In red:) FIVE HUNDRED DOLLARS. $500.

(Printed across the face in red:) $500.

I, Sherlock J. Andrews, hereby certify that The Cleveland, Painesville & Ashtabula Railroad Company has conveyed to me, by deed bearing date January 1st, 1859, its road, with its income and franchises, and all the property, rights, and privileges of the company pertaining thereto, in trust, for the use and benefit of the holders of its obligations of similar tenor as the foregoing, issued and to be issued, to an amount not exceeding in all one million of dollars, with power to take possession of, use and sell the same, or any part thereof, in case of sixty days' default in paying the interest or principal of said obligations, or any part of them, as by reference to said deed of trust, which I have caused to be recorded in the several counties in or through which said railroad is constructed, will more fully and at large appear. And I further certify that the foregoing is one of the obligations referred to in and secured by said deed.

Trustee.

CLEVELAND, OHIO, *January 1st*, 1859.

[Sanford & Hayward's print, Cleveland.]

42.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first

day of January, 1880, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

41.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1879, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

40.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1879, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

39.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1878, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

38.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1878, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

37.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1877, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

36.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1877, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

35.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1876, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

34.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1876, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

33.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1875, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

32.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1875, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

31.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1874, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

30.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1874, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

29.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first

day of July, 1873, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

28.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1873, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

27.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1872, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

26.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1872, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

25.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1871, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

24.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1871, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

23.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1870, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

22.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1870, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

21.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1869, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

20.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1869, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

19.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1868, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

18.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1868, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

17.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1867, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

16.

The Cleveland, Painesville & Ashtabula Railroad Company will pay

the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1867, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

15.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1866, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

14.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1866, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

13.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1865, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

12.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1865, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

11.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1864, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

10.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1864, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

9.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1863, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

8.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1863, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

7.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1862, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

6.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1862, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

5.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1861, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

4.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of January, 1861, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

3.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean Bank, in the city of New York, on the first day of July, 1860, seventeen dollars and fifty cents, interest due on that day on their bond No.

Treas.

$17 50.

2.

1.

GEORGE B. ELY.

Exhibit "E," attached to depositions of George B. Ely.

GEORGE W. MASON,
Commissioner.

[See other side.]

93 (No.) (No.

Transferred this day on the books of the company to

Treasurer.

CLEVELAND, 18

(No.)

Transferred this day on the books of the company to

Treasurer.

CLEVELAND, 18

(No.)

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Transferred this day on the books of the company to

Treasurer.

CLEVELAND, 18

(No.)

Transferred this day on the books of the company to

Treasurer.

CLEVELAND, 18

(Indorsed:) Cleveland, Painesville & Ashtabula Railroad Company. Mortgage bond No. . 500 dollars. 7 per cent. interest, payable January 1st and July 1st, and bond payable in New York, January 1st, 1880.

94 "F."

UNITED STATES OF AMERICA,

STATES OF OHIO [cut] AND PENNSYLVANIA.

No.] [$5,000.

Cleveland, Painesville & Ashtabula Railroad Co.

The Cleveland, Painesville & Ashtabula Railroad Company acknowledges itself indebted and bound to Geo. B. Ely or bearer, in the sum of five thousand dollars, in lawful money of the United States of America, payable at the Ocean National Bank, in the city of New York, on the first day of October, in the year one thousand eight hundred and ninety-two, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first days of October and April in each year, on the presentation and surrender, as the same fall due, of the annexed coupons or interest warrants. And said company further agrees, that this obligation, and all rights and benefits arising therefrom may be transferred by general or special endorsement or by delivery, as if the same were a promissory note payable to bearer, and hereby waive all benefits from valuation or appraisement laws.

In witness whereof the said company has hereto caused to be affixed its corporate seal, and these presents to be subscribed by its president, this first day of October, 1867.

President.

(In red:) FIVE THOUSAND DOLLARS.

(Printed in red ink across the face:) $5,000.

$5,000.

I, Geo. B. Ely, hereby certify that The Cleveland, Painesville & Ashtabula Railroad Company has conveyed to me by deed bearing date October 1st, 1867, its road, with its income and franchises, and all the property, rights and privileges of the company pertaining thereto, in trust, for the use and benefit of the holders of its obligations of similar tenor as the foregoing, issued and to be issued to an amount not exceeding in all one million of dollars, with power to take possession of, use, and sell the same, or any part thereof, in case of sixty days default in paying the interest or principal of said obligations, or any part of them, as by reference to said deed of trust, which I have caused to be recorded in the several counties in or through which said railroad is constructed, will more fully and at large appear. And I further certify that the foregoing is one of the obligations referred to in and secured by said deed.

Cleveland, Ohio, October 1st, 1867.

Trustee.

[Sanford & Hayward's print, Cleveland.]

50.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1892, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

49.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1892, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

48.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1891, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

47.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1891, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

46.

The Cleveland Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1890, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

45.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1890, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

44.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1889, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

43.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1889, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

42.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1888, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

41.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1888, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

40.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1887, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

39.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1887, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

38.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1886, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

37.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1886, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

36.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1885, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

35.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1885, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

34.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1884, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

33.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1884, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

32.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1883, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

31.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1883, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

30.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1882, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

29.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1882, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

28.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1881, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

27.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1881, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

26.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1880, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

25.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1880, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

24.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1879, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

23.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1879, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

22.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1878, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

21.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1878, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

20.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1877, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

19.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1877, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

18.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1876, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

17.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1876, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

16.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1875, one hundred and seventy-five dollars interest due on that day on their bond No.

Auditor.

$175 00.

15.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1875, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

14.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1874, one hundred and seventy-five dollars, interest due on that day on bond No.

Auditor.

$175 00.

13.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1874, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

12.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1873, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

11.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1873, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

10.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1872, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

9.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1872, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

8.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October 1871, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

7.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1871, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

6.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1870, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

5.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1870, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

4.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer at the Ocean National Bank, in the city of New York, on the first day of October, 1869, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

3.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of April, 1869, one hundred and seventy-five dollars, interest due on that day on their bond No.

Auditor.

$175 00.

2.

The Cleveland, Painesville & Ashtabula Railroad Company will pay the bearer, at the Ocean National Bank, in the city of New York, on the first day of October, 1868, one hundred and seventy-five dollars interest due on that day on their bond No.

Auditor.

$175 00.

GEORGE B. ELY.

Exhibit "F" attached to deposition of Geo. B. Ely.

GEORGE W. MASON,
Commissioner.

95 (Indorsed:) Cleveland, Painesville & Ashtabula Railroad Company. Five thousand dollars. Seven per cent. mortgage bond. No. . Interest payable 1st April and 1st October, at the Ocean National Bank, in the city of New York. Principal payable 1st October, 1892.

The trust mortgage securing the payment of this bond, has been duly stamped in conformity with the United States revenue and excise laws.

Trustee.

96 (Endorsed as follows:) Commonwealth of Pennsylvania vs. The Cleveland, Painesville and Ashtabula R. R. Co. Dauphin common pleas. No. 413. Aug. T., 1869. Depositions of Amasa Stone et al. Filed March 5, 1870.

97 *Opinion of the court.*

The facts in this case and the principles of law arising thereon, are in the main very similar to and almost identical with those in The Commonwealth vs. The Pittsburg, Fort Wayne and Chicago Railway Company, this day decided; and to our charge in that case, we refer for our views of the law. We shall not deliver a second time in extenso or repeat our reasoning or reference to authorities, but adopt what has been already said. Least the defendant should be unable to avail itself of our ruling in that case without showing that it had raised the same or additional questions in this, we will state substantially our ruling in the present, so that the decision of the court will admit of review. The facts of the case are undisputed and are substantially set forth in the notes of testimony, the papers from the department, and the depositions read.

First. Is this a corporation created by the laws of Pennsyl-
98 vania, or having such existence in this State as subjects its bonds to taxation under the acts of 1844 and 1854, and requires the tax to be collected under the acts of 1864 and 1868? That it is, we think, is manifested by the statutes empowering it to make purchases and manage its road between the Ohio State line and the town of Erie. It has been decided to be such a corporation of the State of Pennsylvania as subjects it to a tax on its capital stock under the same or identical

laws as appears in the Commonwealth against the same company, reported in 5 Casey, 370. That point may be considered settled.

Second. That this is one of the debts bearing interest which is taxed by our laws is decided in the charge just delivered and to which we have referred.

Third. It is said that this is a debt secured by mortgages embracing the entire road some seventy miles of which is situated in Ohio,
99 and only twenty-five and one-half miles thereof in Pennsylvania; that our laws cannot tax what is out of the State, and there is no law authorizing a severance; the bonds in like manner are entire and can neither be taxed in full or apportioned, consequently cannot be taxed. This position is overruled. We have already expressed our views fully in the case cited and the answer then given is adopted here.

Fourth. A large portion of the debt is due to non-residents of the State over whose persons or property we have no jurisdiction and therefore their money cannot be taxed by Pennsylvania. This position the court declares untenable. The point is ruled in Maltby vs. The Railroad Company, 2 P. F. Smith, 140, and is referred to and enlarged upon in the charge just delivered. The bonds are presumed to have been used in building the road and are secured by the mortgages
100 thereon. The road and all of franchises is protected by our laws, and on account of this protection they may be taxed.

Fifth. It is assumed that the law directing a portion of the interest to be withheld by the debtor impairs the obligation of the contract between him and the creditor, and is therefore in conflict with the Constitution of the United States.

We have already said that the property on which this debt is secured is protected by the laws of Pennsylvania, which could, in consideration thereof, tax the obligation. All that is done by this law is to make the debtor the collector of the tax for the use of the State. If the State can tax the obligation it can as well direct the obligor to retain and pay over as it could for a tenant to pay the taxes assessed on premises and deduct the same from the landlord where there is no provision in the lease.

101 Sixth. The defendant avers that the act of 1868 does not authorize its officers to retain. That is a clear mistake. The 11 section of that act both authorizes the officers of the company to retain and requires them to pay over to the state treasurer.

Seventh. The contract being made out of the State, and the interest and principal payable in New York, the bonds cannot be taxed, and, therefore, there cannot be lawfully any retention of the taxes. In answering this position, we leave out of view the fact that the interest due on $500,000 of these bonds is payable in Philadelphia, as admitted in the appeal, because the State claims the right to tax all in proportion to the length of road protected under our laws. Pennsylvania taxes all of the obligations pro rata, which prevents double taxation, and does no injustice to any one. We treat the citizens of other States, hav-
102 ing property or rights here, as we do our own citizens. If the tax is lawful, it must fall on all of the bonds; if unlawful, it cannot be exacted from any.

Eighth. This law violates the Constitution of the United States, so far as it taxes the property of non-residents.

This position is, we think, without foundation. There is no provision on the subject in the Constitution of the United States, nor is there any

principle of international law which forbids taxation by the States co extensive with the protection afforded by their laws.

Ninth. As the settlement was made under the act of 1868, for the whole of that year, it is said to be illegal in part, as the statute was not enacted until the first day of May of that year.

This, we consider, mere matter of form, in stating the amount. The bonds were taxable under the acts of 1844 and 1854, and the taxes required to be retained and paid over by the corporation officers
103 by the act of 1864, so that whatever was assessable from the 1st of January till the 1st of May, came in under these laws, which taxed the obligations in precisely the same amount.

Tenth. Lastly, it is said that the officers of this corporation, not being citizens of or residents in Pennsylvania, nor any of the company offices located here, they cannot be obliged to become tax collectors for this State, under the penalty of personal responsibility.

We answer. In granting permission to this company to construct and use its road in Pennsylvania, care was taken to retain control over its action. By the 4 section of the act, the State reserves the right to tax the railroad company the same as is or shall be imposed by any general tax law on the railroads of this Commonwealth, although it is not obliged to have an office in Pennsylvania; yet, at least, three (3) of the directors are required to be citizens thereof. The law now proposed
104 to be enforced taxes this corporation precisely the same as those of our own State, and the money is to be collected in the same way. We are of the opinion that this State could confer the power on the corporation officers to retain the taxes as already stated, and, in the absence of any proof of that duty having been neglected, the money would be presumed to be in the company's treasury. Whether this State can proceed to collect its debt from the company officers, in their individual capacity, need not be decided. She has ample means of a different character at her command. The rolling-stock of the corporation could probably be seized, the profits of the road be sequestered, so far as it is situated in this State, or the security given on appeal be pursued. After judgment, the State must resort to such remedy as is open
105 by law for the collection of the debt. The only question for our consideration at present is as to the liability of the corporation in this appeal. We instruct you that every defense set up has failed, and that the State is entitled to judgment for the amount found due by the settlement, with interest thereon at the rate of 12 per centum per annum, to be computed from sixty days after the first day of June, 1869, the date of settlement, being twenty-five hundred and eleven dollars and seventy-three cents ($2,511 73.)

To this charge and the ruling of the court in the case, the defendant, by its counsel, did except; at their request, this exception sealed.

JNO. J. PEARSON. [L. S.]

(Endorsed as follows:) The Commonwealth of Pennsylvania vs. The Cleveland, Painesville and Ashtabula R. R. Co. 413, August T., 1869. Notes and charge filed April 2, 1870.

106 In the supreme court of Pennsylvania in and for the middle district, ss:

At a supreme court of the State of Pennsylvania in and for the middle district, begun and held at the city of Harrisburg, Penn'a, on the first Monday of May, A. D. 1870—

Present and presiding, the Honorable James Thompson, chief justice of the supreme court of Pennsylvania; John M. Read, Daniel Agnew, George M. Shârswood, justices; and Wallace DeWitt, prothonotary—

Among the records of the said supreme court of Pennsylvania in and for said middle district to May term, is contained as follows, to wit:

Docket entries.

THE CLEVELAND, PAINESVILLE AND ASHTABULA Railroad Company, plaintiff in error, defendant below,
vs.
THE COMMONWEALTH OF PENNSYLNANIA, defendant in error, plaintiff below.

Writ of error to the court of common pleas of Dauphin County, Pa. No. 413 August term, 1869, (below;) No. 91, May term, 1870, (above.)

107 Precipe for writ of error and affidavit, filed April 28, 1870.

Writ of error to the court of common pleas of Dauphin County, issued April 28, 1870, returnable the third Monday of May, A. D. 1870.

Assignments of error filed by plaintiff in error, May 16, 1870.

Writ of error returned with record from the court of common pleas of Dauphin County, and filed May 16, 1870.

Called for argument and argued May 21, 1870.

And now, to wit, July 7, 1870, this cause came on to be heard;
108 and, on due consideration, it is ordered that the judgment of the court below be affirmed, this court being of opinion that the rulings of the learned judge of the court below, complained of in the assignments of error were, in all respects, in conformity with law.

Per curiam.

THOMPSON, *C. J.*

Petition for writ of error to the Supreme Court of the United States; citation to defendant in error; writ of error from the Supreme Court of the United States allowed by W. Strong, justice Supreme Court of the U. S., and bond in the penal sum of six thousand dollars, approved by W. Strong, justice of the supreme court of the U. S., received and filed July 16, 1870. Same day a copy of the writ of error for the defendant in error, to wit, The Commonwealth of Pennsylvania, received.

July 28, 1870, service of citation accepted by Hon. F. Carroll Brewster, att'y gen. Pa., and writ of error received by him.

Certified from the record.

{ SEAL OF THE SUPREME COURT OF PENN'A, MIDDLE DISTRICT. }

WALLACE DE WITT,
Prothonotary.

109 In the supreme court of Pennsylvania in and for the middle district, ss:

THE CLEVELAND, PAINESVILLE AND ASHTABULA Railroad Company, plaintiff in error, defendant below,
vs.
THE COMMONWEALTH OF PENNSYLVANIA, defendant in error, plaintiff below.

In Dauphin County common pleas, No. 413 August T., 1869.

Issue writ of error to the court of common pleas of Dauphin County, returnable the 3d Monday of May next.

J. C. KUNKEL,
J. W. SIMONTON,
Att'ys for Plaintiff in Error.

APRIL 28, 1870.

To WALLACE DE WITT,
Prothonotary.

DAUPHIN COUNTY, *ss:*

110 John W. Simonton, attorney for above-named plaintiff in error, being duly affirmed according to law, says that the writ of error in this case is not intended for delay.

J. W. SIMONTON.

Affirmed and subscribed before me this 28 day of April, 1870.

WALLACE DE WITT,
Proth'y.

(Endorsed as follows:) Filed April 28, 1870.

111 In the supreme court of Pennsylvania in and for the middle district, set:

SEAL OF THE SUPREME COURT OF PENNSYLVANIA, MIDDLE DISTRICT. The Commonwealth of Pennsylvania, to the justices of the court of common pleas for the county of Dauphin, greeting: Because, in the record and process, and in rendering the judgment in a certain plaint, which was in our said court, before the judges of the same court, by our writ, between The Cleveland, Painesville and Ashtabula Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, as it is said, manifest error hath intervened to the great damage of the said plaintiff in error, as by the complaint of the same plaintiff in error we have received information: We, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Harrisburg, in and for the middle district of said Commonwealth, on the 3d Monday of May next, and this writ, that, the record and process aforesaid being inspected, we may further cause to be done, what of right and according to our laws and customs ought.

Witness the Honorable James Thompson, chief justice of our said supreme court, at Harrisburg, the 28 day of April, in the year of our Lord one thousand eight hundred and seventy, and of the Commonwealth the 93.

Allowed.

WALLACE DE WITT,
Prothonotary.

112 The record and process, and all things touching the same, so full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

(S'g'd) JNO. J. PEARSON. [L. S.]

(Indorsed:) No. 91. May term, 1870. Supreme court of Pennsylvania, middle district. The Cleveland, Painesville and Ashtabula Railroad Company, plaintiff in error, vs. The Commonwealth of Pennsylvania, defendant in error. Writ of error to the court of common pleas for the county of Dauphin. Returnable the 3d Monday of May, 1870. Rule on the defendant in error to appear and plead on the return day of the writ.

"N. B.—10 days' notice to the parties or their counsel below is necessary to compel an appearance."

W. DE WITT, *Proth'y.*

Filed in Dauphin common pleas, April 28, 1870.

113 *Assignments of error.*

First. The court erred, in charging the jury, as follows:

"It is said that this is a debt secured by mortgages, embracing the entire road, some seventy miles of which is situated in Ohio, and only twenty-five and one-half miles thereof in Pennsylvania; that our laws cannot tax what is out of the State, and there is no law authorizing a severance. The bonds, in like manner, are entire, and can neither be taxed in full or apportioned; consequently cannot be taxed. This position is overruled. We have already expressed our views fully in the case cited, and the answer there given is adopted here."

Second. The court erred in charging the jury as follows:

"It is said that a large portion of the debt is due to non-residents of the State, over whose person or property we have no jurisdiction,
114 and therefore their money cannot be taxed by Pennsylvania. This position the court declares untenable. The point is ruled in Maltby vs. The Railroad Company, (2 P. F. Smith, 140,) and is referred to and enlarged upon in the charge just delivered. The bonds are presumed to have been used in building the road, and are secured by mortgages thereon. The road and all its franchises are protected by our laws, and on account of this protection they may be taxed."

Third. The court erred in charging the jury as follows:

"It is assumed that the law directing a portion of the interest to be withheld by the debtor impairs the obligation of the contract between him and the creditor, and is therefore in conflict with the Constitution of the United States.

"We have already said that the property on which this debt is

115 secured is protected by the laws of Pennsylvania, which would, in consideration thereof, tax the obligation. All that is done by this law is to make the debtor the collector of the tax for the State. If the State can tax the obligation, it can as well direct the obligor to retain and pay over as it could for a tenant to pay the taxes assessed on premises, and deduct the same from the landlord, where there is no provision in the lease."

4th. The court erred in charging the jury as follows:

"It is said that the contract being made out of the State, and the interest and principal payable in New York, the bonds cannot be taxed, and therefore there cannot be lawfully any retention of the taxes. In answering this position, we leave out of view the fact that the interest due on $500,000 of these bonds is payable in Philadelphia, as ad-
116 mitted in the appeal, because the State claims the right to tax all in proportion to the length of road protected under our laws.

"Pennsylvania taxes all of the obligations pro rata, which prevents double taxation, and does no injustice to any one. We treat the citizens of other States having property or rights here as we do our own citizens. If the tax is lawful, it must fall upon all of the bonds; if unlawful, it cannot be expected from any."

Fifth. The court erred in charging the jury as follows:

"It is said that this law violates the Constitution of the United States so far as it taxes the property of non-residents.

"This position is, we think, without foundation. There is no provision in the Constitution of the United States, nor is there any principle of international law which forbids taxation by the States, coëxten-
117 sive with the protection afforded by their laws."

Sixth. The court erred in charging the jury as follows:

"As the settlement was made under the act of 1868 for the whole of the year, it is said to be illegal in fact, as the statute was not enacted until the first of May of that year.

"This we consider mere matter of form in stating the account. The bonds were taxable under the acts of 1844 and 1854, and the tax was required to be retained and paid over by the corporation officers by the act of 1864; so that whatever was assessable from the first of January till the first of May came in under these laws, which taxed the obligations in precisely the same amount."

Seventh. The court erred in charging the jury as follows:

"It is said that the office's of this corporation, not being citizens of or residents in Pennsylvania, nor any of the company officers
118 located here, they cannot be obliged to become tax-collectors for this State under the penalty of personal responsibility.

"We are of opinion that this State could confer the power on the corporation officers to retain the tax, as already stated; and in the absence of any proof of that duty having been neglected, the money could be presumed to be in the company's treasury."

Eighth. The court erred in charging the jury as follows:

"The only question for our consideration at present is as to the liability of the corporation in this appeal. We instruct you that every defence has failed, and that the State is entitled to judgment for the amount found due by this settlement, with interest thereon at the rate of twelve per centum per annum, to be computed from 60 days after the 1st day of June, 1869, the date of settlement, being twenty-five hundred and eleven $\frac{73}{100}$ dollars, ($2,511 73.)"

(Endorsed as follows:) Filed May 16, 1870.

119 Judgment entered July 7, 1870, as follows, to wit:

And now, to wit, July 7, 1870, this cause came on to be heard; and, on due consideration, it is ordered that the judgment of the court below be affirmed, this court being of the opinion that the rulings of the learned judge of the court below, complained of in the assignments of error, were in all respects in conformity with law.

Per curiam.

THOMPSON, *C. J.*

120 And now, here, on this day, to wit, July 16, A. D. 1870, the said The Cleveland, Painesville and Ashtabula Railroad Company produced to the said supreme court of Pennsylvania here, the writ of the United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings aforesaid, of the judgment aforesaid, so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday of December next, which writ of error is in the words and of the tenor following, to wit:

121 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, set:

The President of the United States to the judges of the supreme court of the State of Pennsylvania, the highest court of law or equity in the said State, greeting:

Because, that in the record and process, and also in the rendition of judgment in a suit before you, between The Cleveland, Painesville and Ashtabula Railroad Company, a corporation of the State of Pennsylvania, plaintiff in error, and The State of Pennsylvania, defendant in error, (No. 91 of the May term, 1870, of the middle district of Pennsylvania,) in which said suit the validity of a statute of the State of Pennsylvania on the ground of repugnancy to the Constitution of the United States, is said to have been drawn in question and the decision to have been in favor of the said statute, a manifest error has intervened to the great damage of the said plaintiff in error, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded that, if judgment thereof be given, then under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of De-
122 cember next, in the Supreme Court to be then and there held, that, the record and process aforesaid being inspected, the said Supreme Court may cause to be done therein, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this seventeenth day of July, A. D. one thousand eight hundred and seventy, and in the ninety-fifth year of the independence of the said United States.

[SEAL.]

JOHN B. BEAVER,
Pro. Clerk Cir. C't U. S.

Allowed July 16, 1870.

W. STRONG,
Associate Justice S. C. U. S.

123 (Indorsed:) U. S. Supreme Court. The Cleveland, Painesville and Ashtabula Railroad Co., plaintiff in error, vs. The State of Pennsylvania, def't in error. Writ of error.

Filed in the office of prothonotary of the supreme court of Pennsylvania in and for the middle district, July 16, 1870.

WALLACE DE WITT,
Prothonotary.

$2 00 paid by pl'ff.

124 In pursuance whereof and according to the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

125 *Copy of writ of error bond.*

Supreme court of the State of Pennsylvania, middle district.

Know all men by these presents that we, The Cleveland, Painesville and Ashtabula Railway Company, now the Lake Shore and Michigan Southern Railway Company, and H. B. Payne and George B. Ely, are held and firmly bound unto The Commonwealth of Pennsylvania, in the sum of six thousand dollars, to be paid to the said Commonwealth, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, and each of our successors, heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the 13th day of July, A. D. 1870.

The condition of this obligation is such, that whereas the said 126 Commonwealth of Pennsylvania has recovered a judgment in the supreme court of the State of Pennsylvania in and for the middle district against the said Cleveland, Painesville and Ashtabula Railroad Company for the sum of 2,511 73 and costs, which said judgment was rendered on the 7th day of July, A. D. 1870; and whereas the said The Cleveland, Painesville and Ashtabula Railroad Company, in order to obtain a reversal of the same, have sued out a writ of error to the Supreme Court of the United States: Now, therefore, if the above-named The Cleveland, Painesville and Ashtabula Railroad Company shall prosecute their said writ of error with effect, and shall answer all costs and damages, and pay the said judgment, if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

127 The Cleveland, Painesville and Ashtabula R. R. Co., now the Lake Shore and Michigan Southern Railway Company, by—

{ SEAL OF THE LAKE SHORE & MICHIGAN SOUTHERN R'Y CO. }

J. H. DEVEREUX,
Gen. Manager.

Attest:

GEO. B. ELY,
Secretary.

W. B. PAYNE. [L. S.]
GEO. B. ELY. [L. S.]

Executed and delivered in presence of us—
W'M CROWELL.
N. BARTLETT.

(Endorsed as follows:) The Cleveland, Painesville and Ashtabula R. R. Co., plaintiff in error, vs. The State of Pennsylvania, def't in error. U. S. Supreme Court. Bond. Bond and sureties approved. W. Strong, J. July 16, 1870. Filed in the office of the prothonotary of the supreme court of Pennsylvania in and for the middle district, July, 16, 1870. Wallace De Witt, proth'y.

128 The United States of America to the State of Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error issued from the Supreme Court of the United States to the supreme court of Pennsylvania, wherein The Cleveland, Painesville and Ashtabula Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, viz, in a suit, No. 91 of the May term, 1870, (middle district,) of the said supreme court of Pennsylvania, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Strong, one of the associate judges of the Supreme Court of the United States, this sixteenth day of July, A. D. 1870.

W. STRONG.

129 I accept service for defendant in error.

F. CARROLL BREWSTER,
Attorney General of Pennsylvania.

JULY 28, 1870.

(Indorsed:) U. S. Supreme Court. The Cleveland, Painesville and Ashtabula Railroad Co., plaintiff in error, vs. The State of Pennsylvania, def't in error. Citation. Filed in the office of the prothonotary of the supreme court of Pennsylvania in and for the middle district. July 16, 1870. Wallace De Witt, prothonotary.

130 In testimony that the aforegoing pages, from one to 127, inclusive, is a true copy and correct transcript, taken from the record, and all proceedings of the supreme court of Pennsylvania, the highest court of law or equity of the State of Pennsylvania, in the case of The Cleveland, Pain'sville and Ashtabula Railroad Company, plaintiff in error, vs. The Commonwealth of Pennsylvania, defendant in error, No. 91, May term, A. D. 1870, and all papers filed and attached to said record, I have hereunto subscribed my name, and the seal of the said supreme court affixed this 29 day of October, A. D. 1870.

[SEAL.] WALLACE DE WITT,
Prothonotary of the Supreme Court of Pennsylvania for the Middle District.

131 Supreme Court of the United States. In error of December term, A. D. 1870.

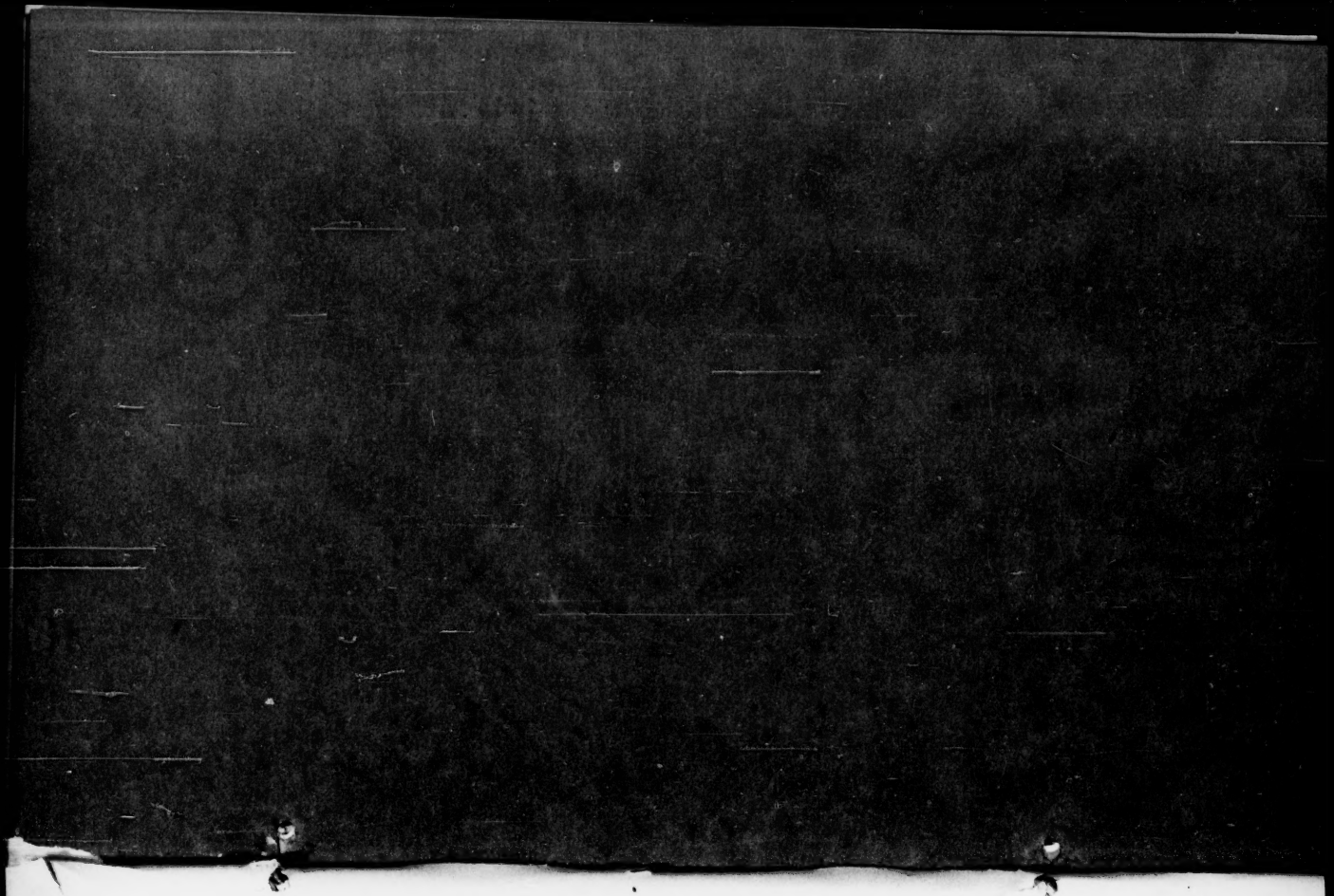
THE CLEVELAND, PAINESVILLE AND ASHTABULA Railroad Company
v.
THE COMMONWEALTH OF PENNSYLVANIA.

Afterwards, to wit, on the day of December, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said The Cleveland, Painesville and Ashtabula Railroad Company, by J. W. Simonton, its attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said The Commonwealth of Pennsylvania to have or maintain its aforesaid action thereof against the said The Cleveland, Painesville and Ashtabula Railroad Company; that there is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid given, was given for the said The Commonwealth of Pennsylvania against the said The Cleveland, Painesville and Ashtabula Railroad Company, whereas, by the law of the land, and the Constitution of the United States, the said judgment ought to have been given for the said The
132 Cleveland, Painesville and Ashtabula Railroad Company, against the said The Commonwealth of Pennsylvania; and the said The Cleveland, Painesville and Ashtabula Railroad Company prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of said judgment. And it will pray, &c.

J. W. SIMONTON,
Att'y for Pl'ff in Error.

133 (Indorsed:) Supreme Court of the United States, of December term, A. D. 1870. No. 406. The Cleveland, Painesville and Ashtabula Railroad Company v. The Commonwealth of Pennsylvania. Assignment of error. Filed 14th December, 1870.

(Indorsement on cover:) No. 406. The Cleveland, Painesville and Ashtabula Railroad Company, plaintiff in error, vs. The State of Pennsylvania. Pennsylvania sup. court. Filed 14th December, 1870.



Supreme Court of the United States.

NO. 406 DECEMBER TERM, 1870.

THE CLEVELAND, PAINESVILLE AND ASHTABULA RAILROAD COMPANY,

Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

Brief on behalf of the Plaintiff in Error.

BY

J. W. SIMONTON,

Counsel.

Supreme Court of the United States.

THE CLEVELAND, PAINESVILLE AND ASHTABULA RAILROAD COMPANY,
Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

In Error to the Supreme Court of the State of Pennsylvania.

STATEMENT OF THE CASE.

This case is brought here by a writ of error, directed to the Supreme Court of the State of Pennsylvania, which is the highest court of law in the State, to bring up for review a judgment of that court, affirming the validity of a statute of Pennsylvania, which was alleged to be repugnant to the Constitution of the United States. The case originated as follows:

On the first day of May, 1868, the Legislature of the State of Pennsylvania passed an act, entitled "An Act to revise, amend and consolidate the several laws taxing corporations, brokers and bankers;" the eleventh section of which provides as follows:

"The president, treasurer or cashier of every company, except banks or savings institutions, incorporated under the laws of this Commonwealth, doing business in this State, which pays interest to its bondholders or other creditors, shall before the payment of the same, retain from said bondholders or creditors, a tax of five per centum upon every dollar of interest paid as aforesaid; and shall pay over the same semi-annually, on the first days of July and January in each and every year, to the State Treasurer for the use of the Commonwealth; and every president, treasurer or cashier as aforesaid shall annually, on the thirty-first day of each December, or within thirty days thereafter, report to the Auditor General, under oath or

affirmation, stating the entire amount of interest paid by said corporation to said creditors, during the year ending on that day; and thereupon the Auditor General and State Treasurer shall proceed to settle an account with said corporation as other accounts are now settled by law; and in the settlement of said accounts the persons aforesaid shall be allowed the same commission or compensation as is now allowed by law to county treasurers; and in case the said president, treasurer or cashier shall neglect or refuse to make the report required by this section, within sixty days after the time specified, he shall forfeit to the State the amount of his commission, for such failure or neglect: *Provided*, That the principal sums, from the interest of which the said tax is deducted, shall not be assessed and taxed for State purposes in the valuation of personal property, or returned by county commissioners to the board of revenue commissioners."

The treasurer of the corporation, plaintiff in error in this case, as required by said act, made a report on the 3d day of May, 1869, showing that said corporation had, during the year 1868, paid interest, at the rate of seven per centum per annum, on the whole of their bonded debt of $2,500,000; said interest amounting to $175,000.

On this report, the Auditor General and State Treasurer of Pennsylvania, on the first day of June, 1869, settled an account against said corporation, a copy of which is here given, taken from page ten of the printed record in this case.

"*Cleveland, Painesville and Ashtabula railroad company, in account with the Commonwealth of Pennsylvania, Dr.*

1868.

For tax on loans, per act of May 1, 1868, for year ending December 31, 1868, as per report herewith filed.....	
Funded debt	$2,500,000 00
Interest paid, 7 per cent.; tax, 5 per cent. on $46,730, or $\frac{2}{9}\frac{5}{5}\cdot\frac{5}{5}$ parts of the total amount of interest paid, representing the proportion of the railroad of said company within the State of Pennsylvania.....	2,336 50
Due Commonwealth	2,336 50"

We may here state, that though the statute does not authorize or direct it to be done, the Auditor General and State Treasurer, in settling these accounts, apportion the taxes claimed from each railroad company according to the proportion which the length of their road, lying within the State of Pennsylvania, bears to the length of their whole road.

From this settlement the said company, now plaintiff in error, appealed to the court of common pleas of Dauphin county, in the manner provided by the act of March 30, 1811, which is as follows:

"If any person or persons, body politic or corporate, be dissatisfied with the settlement of his, her or their account by the Auditor General and State Treasurer, he, she or they may appeal therefrom to the court of common pleas of the county in which the seat of government shall then be, and such appeal shall be transmitted, by the Auditor General, to the clerk of the said court, to be by him entered of record, subject to like proceedings, under the direction of the State Treasurer, as in common suits, &c." 5 *Smith's Laws*, 230. Purdon, p. 822, plac. 20.

The objections to the said settlement, as specified in the appeal, were, in substance, as follows:

"That the bonds, upon which the interest taxed in said settlement accrued, were secured by mortgages upon the whole line of the road, and the franchises and appurtenances, of the company, extending from Erie, in the State of Pennsylvania, to Cleveland, in the State of Ohio, and no apportionment of the bonds having been made, no part of them, or of the interest accruing on them, could be lawfully taxed by the State of Pennsylvania, as by so doing she would be taxing property, persons, and interests, beyond her jurisdiction.

"That the greater number of the creditors of said company are and were at all times non-residents of Pennsylvania, citizens of other States, who could not lawfully be taxed, and were not intended to be taxed by this law, and that the contracts of loan having been made with them in Ohio, prior to the passage of the tax law, and the debt and interest being payable in New York, the law if applied to them would impose a tax upon citizens of other States, on account of their property and interests, which, as well as themselves, are beyond the jurisdiction of the State of Pennsylvania, and, in so doing, would impair the obligation of the contract between them and the railroad company, and it is, therefore, repugnant to the Constitution of the United States and null and void; that the said act of May 1, 1868, in so far as it is applicable to this settlement, and the facts and circumstances of this case, is unconstitutional and void, because repugnant to the Constitution of the United States; and that the officers of the company, being neither residents nor citizens of the State of Pennsylvania, can not be compelled to act as tax collectors for her."

(See pages ten, eleven and twelve of the printed record, for the specifications in full.)

The cause was put at issue on these allegations, and on the trial in the court of common pleas, all the facts, alleged by the now plaintiff in error were fully proved. It was shown by uncontradicted testimony, and was not disputed, that the funded debt of the corporation amounted to the sum of $2,500,000, and that it was secured by three mortgages, copies of which were offered in evidence—see printed record pp. 23 to 30—each covering the

entire line of the road from Erie, in the State of Pennsylvania, to Cleveland, in the State of Ohio, one of which, with the bonds secured by it, was executed and delivered, and the bonds sold in Cleveland, Ohio, in 1854, another in 1859, and the third in 1867; and that nearly all the bonds were taken at the time they were issued by non-residents of the State of Pennsylvania, citizens of other States of the Union, and have ever since been held and owned by them; and that the principal and interest of $2,000,000 of said bonds are payable in the city of New York, and of $500,000 in the city of Philadelphia; and that said mortgages contain a power of sale to trustees therein named, in default of payment of principal or interest, authorizing them to sell the road, franchises and appurtenances, of the mortgagors, in the city of New York, or in Cleveland, Ohio.

There were also given in evidence acts of the Legislatures of the States of Ohio and Pennsylvania respectively, showing that the company was incorporated by both States, with authority to construct and maintain a railroad from Erie, Pennsylvania, to Cleveland, Ohio.

The court of common pleas over-ruled all the objections of the company and instructed the jury, as matter of law, that every defence had failed, and that they must find a verdict for the Commonwealth for the whole amount of tax claimed, which they did; and judgment being entered thereon, the cause was removed to the Supreme Court of the State, where the judgment of the court below was affirmed, the court making this order; "And now, to wit, July 7, 1870, this cause came on to be heard, and on due consideration, it is ordered that the judgment of the court below be affirmed, this court being of the opinion that the rulings of the learned judge of the court below, complained of in the assignments of error, were, in all respects, in conformity with law;" whereupon the cause was brought into this court, by writ of error.

ASSIGNMENTS OF ERROR.

1. The Supreme Court of the State of Pennsylvania erred in affirming the judgment of the court below, as follows:

"And now, to wit, July 7, 1870, this cause came on to be heard, and on due consideration, it is ordered that the judgment of the court below be affirmed, this court being of the opinion that the rulings of the learned judge of the court below, complained of in the assignments of error, were, in all respects, in conformity with law."

2. The said Supreme Court erred in not sustaining the first error assigned in said court, which was that the court below erred in charging the jury, as follows:

"It is said that this is a debt secured by mortgages embracing the entire road, some seventy miles of which is situated in Ohio and only twenty-five

and one-half miles thereof in Pennsylvania. That our laws cannot tax what is out of the State, and there is no law authorizing a severance. The bonds in like manner are entire, and can neither be taxed in full or apportioned, consequently cannot be taxed. This position is overruled. We have already expressed our views fully in the case cited, and the answer there given is adopted here."

3. The said Supreme Court erred in not sustaining the second error assigned in said court, which was that the court below erred in charging the jury, as follows:

"It is said that a large portion of the debt is due to non-residents of the State, over whose person or property we have no jurisdiction, and therefore their money cannot be taxed by Pennsylvania. This position the court declares untenable. The point is ruled in Maltby vs. The Railroad Company, 2 P. F. Smith, 140, and is referred to and enlarged upon in the charge just delivered. The bonds are presumed to have been used in building the road, and are secured by the mortgages thereon. The road and all of its franchises is protected by our laws, and on account of this protection they may be taxed."

4. The said Supreme Court erred in not sustaining the third error assigned in said court, which was that the court below erred in charging the jury, as follows:

"It is assumed that the law directing a portion of the interest to be withheld by the debtor impairs the obligation of the contract between him and the creditor, and is, therefore, in conflict with the Constitution of the United States.

"We have already said that the property on which this debt is secured, is protected by the laws of Pennsylvania, which would, in consideration thereof, tax the obligation. All that is done by this law is to make the debtor the collector of the tax for the use of the State. If the State can tax the obligations it can as well direct the obligor to retain and pay over, as it could for a tenant to pay the taxes assessed on premises, and deduct the same from the landlord, where there is no provision in the lease."

5. The said Supreme Court erred in not sustaining the fourth error assigned in said court, which was that the court below erred in charging the jury, as follows:

"It is said that the contract being made out of the State and the interest and principal payable in New York, the bonds cannot be taxed, and, therefore, there cannot lawfully be any retention of the taxes. In answering this position we leave out of view the fact that the interest due on $500,000 of these bonds is payable in Philadelphia, as admitted in the appeal, because the State claims the right to tax *all* in proportion to the length of road protected under our laws.

"Pennsylvania taxes all of the obligations *pro rata*, which prevents double taxation, and does no injustice to any one. We treat the citizens of other States, having property or rights here, as we do our own citizens. If the tax is lawful it must fall upon all of the bonds; if unlawful it cannot be exacted from any."

6. The Supreme Court erred in not sustaining the fifth error assigned in said court, which was that the court below erred in charging the jury, as follows:

"It is said that this law violates the Constitution of the United States so far as it taxes the property of non-residents.

"This position is, we think, without foundation. There is no provision on the subject in the Constitution of the United States, nor is there any principle of international law which forbids taxation by the States, co-extensive with the protection afforded by their laws."

7. The said Supreme Court erred in not sustaining the seventh error assigned in said court, which was that the court below erred in charging the jury, as follows:

"It is said that the officers of this corporation, not being citizens of, or residents in Pennsylvania, nor any of the company officers located here, they cannot be obliged to become tax collectors for this State under the penalty of personal responsibility.

"We are of opinion that this State could confer the power on the corporation officers to retain the tax, as already stated, and in the absence of any proof of that duty having been neglected, the money could be presumed to be in the company treasury."

8. The said Supreme Court erred in not sustaining the eighth error assigned in said court, which was that the court below erred in charging the jury, as follows:

"The only question for our consideration at present is as to the liability of the corporation in this appeal. We instruct you that every defence has failed, and that the State is entitled to judgment for the amount found due by the settlement, with interest thereon at the rate of *twelve per centum per annum*, to be computed from sixty days after the first day of June, 1869—the date of settlement—being twenty-five hundred and eleven dollars and seventy-three cents, ($2,511 73.)"

BRIEF OF ARGUMENT.

The Supreme Court of the State of Pennsylvania, the highest court of law in the State, affirming the judgment of the Court of Common Pleas of Dauphin County, have held that the eleventh section of the act of May 1, 1868, given in full in the statement of the case above, is, when applied to

the facts and circumstances of this case, as above detailed, a valid and constitutional exercise of the taxing power of the State, and does not impair the obligation of the contract between the non-resident bondholder and the railroad corporation, plaintiff in error.

Believing that there is error in their judgment, and that the act in question, as construed and applied, is repugnant to the Constitution of the United States, we have brought the case here on a writ of error to said Supreme Court, and we contend that its judgment should be reversed:

FIRST.—*For the reasons given in the case of the Railroad Company vs. Jackson, where the precise point involved here was decided in our favor by this court.*

The statement of the facts of this case, given above, shows that it is, in all essential particulars, identical with the case of The Railroad Company vs. Jackson, 7 Wallace, 262. Here, as there, the company was incorporated with the same name, by the Legislatures of two States, and its road extends from a point within the one State to a point within the other, in a continuous line, as one road, and the bonds claimed to be taxed are secured by mortgages upon the whole line of the road, its franchises and fixtures, including alike the portion lying in each State; no part of the line of the road being liable for the payment of any specified part or quantity of the bonds taxed, but each part being liable for the whole amount. The tax, too, which is claimed in this case, is the same that was claimed in that; the law under which this is claimed having been enacted as a substitute for, and though changed somewhat in phraseology, being identical, in its effect, with the law then in question.

This court, in the Jackson case, say: "The ground upon which we place the objection, in this case, to the tax is, in brief, that the bonds, amounting to $2,500,000, of which those in question are a part, were issued by this company upon the credit of the line of road, its franchises and fixtures extending from Baltimore to Sunbury, a given portion of which line lies within the jurisdiction of the State of Maryland. * * * * The security, therefore, pledged and bound for the payment of them and of the interest, embraces this Maryland portion of the road; and in case of a failure to pay the principal or interest, this portion, with its franchises and fixtures, would be liable to sale in satisfaction of the bonds and interest."

"Now, it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is taxing property and interests beyond her jurisdiction. This portion avails her tax-roll as effectually as if it was situate within her own limits. The Maryland portion is not liable for the payment of any specified part, or quantity, of these bonds thus taxed, but is liable, with all its interests,

for the whole amount, the same as that portion of the road within the State of Pennsylvania. The bonds were an issue in the usual way, by the Northern Central Railway Company, and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds, and, therefore, none can be made, in the taxation, with reference to the line within the respective jurisdictions of the States. If the tax is permitted as it respects one bond, it must be as it respects all."

"Again, if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them. This is too apparent to require argument. The only difference in the two cases is, that the line of the road is longer within the limits of the former than within the latter. Her tax would be a more marked one beyond the jurisdiction of the State, as the property and interests outside of its limits would be larger." * * * * *
* * * * * * * * *

"Our conclusion on this branch of the case is, that to permit the deduction of the tax from the coupons in question, would be giving effect to the acts of the Legislature of Pennsylvania upon property and interests lying beyond her jurisdiction."

We have only to strike out "Maryland" and insert "Ohio," and change the name of the case, when every word of the opinion in the Jackson case will apply as well to this case as if it had been written for it. And this court has said that the adjudications of a State court are no more to control its judgment, in a cause brought here from such court, than if brought from a Circuit Court of the United States, and that its duty depends on the question raised, and not on the channel through which the case comes.—Butz *vs.* City of Muscatine, 8 Wall., 575.

We, therefore, look upon the case of The Railroad Company vs. Jackson, as an authoritative decision of the question involved in this case; and it is only because the Supreme Court of Pennsylvania have thought proper, notwithstanding that decision, to adhere to their own prior case of Maltby vs. The Reading and Columbia Railroad Company, 2 P. F. Smith—52 Penna. State R.—140, that we feel it to be our duty to argue it further, and to call the attention of this court to other reasons why, as we think, the judgment should be reversed, in addition to the one sufficient ground upon which the decision in the Jackson case is put. We contend then, further, that the judgment of the State Court should be reversed:

SECOND.—*Because, for other reasons in addition to those given by this court in the Jackson case, the said act of the Legislature of Pennsylvania, as applied to the facts and circumstances of this case, is unconstitutional*

and void, in that it impairs the obligation of the contract between the non-resident bondholder and the corporation plaintiff in error.

It was said by Mr. Justice Nelson, in delivering the opinion of the court in the latter case, "The tax upon the promissory note or bond given by the resident debtor, and the withholding of the amount from the interest due to the non-resident, would seem to be a tax upon such non-resident. It is not a tax of the money lent, because that belongs to the resident debtor, for which he is taxable; it is a tax on the security, the bond, which is in the hands of the non-resident holder."

This is shown to be so by the very terms of the law under which the tax is claimed. It provides, "that the president, treasurer or cashier of every company, except banks and savings institutions, incorporated under the laws of this Commonwealth, doing business in this State, which pays interest to its bondholders or other creditors, shall, before the payment of the same, *retain from said bondholders or creditors, a tax of five per centum upon every dollar of interest paid as aforesaid*, and shall pay over the same to the State Treasurer for the use of the Commonwealth."

And it has been so construed by the Supreme Court of Pennsylvania, in Clopton vs. The Philadelphia and Reading Railroad Company, 4 P. F. Smith—54 Penn'a State R.—356.

The tax being, then, a charge upon the holder of the bond, and exacted in respect of the bond held by him, the question is: Has the State of Pennsylvania a right to impose it upon non-residents of the State, who are and became holders of the bonds of the plaintiff in error, at the time and in the manner above detailed.

We think this question should be answered in the negative.

We do not doubt the power or right of the State to impose such taxes as she may see fit upon all railroads or parts of railroads which lie within her borders, or upon the franchises of all railroad companies chartered by the State, by any general law which shall apply alike to all according to their value.

The question is not one of the right or power of the State to raise such revenue as she may need from the railroad property or franchises within her limits; no one doubts that she can do this, and neither her right or her power so to do would be affected by a reversal of the judgment in this case.

But it is a question of her power and her right to levy a contribution or tax upon the contracts or choses in action of citizens of other States, by requiring the officers of the debtor corporation to withhold a part of the interest stipulated to be paid to such citizens of other States, and to pay the same into the Treasury of the State.

This we contend she cannot do upon any legal principle of taxation, and

the law if so construed and applied would impair the obligation of the contract between the railroad company and such citizens and residents of other States, and is therefore repugnant to the Constitution of the United States and null and void.

The import of the terms "obligation of a contract" has been thus defined and illustrated by this court: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and form a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. * * * If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence, any law which in its operation, amounts to a denial or obstruction of the rights accruing by a contract, * * * is directly obnoxious to the prohibition of the Constitution." M'Cracken vs. Hayward, 2 How., 612.

And Judge Story has said, "It is the civil obligation of contracts which it (the Constitution) is designed to reach; that is, the obligation which is recognized by, and results from the law of the State in which it is made. * * * * When it does not fall within the predicament of being either illegal or void, its obligatory force is co-extensive with its stipulations." Story on Const, § 1374.

Woodward, C. J., in Maltby vs. the Reading and Columbia Railroad Company, after suggesting that the question, "how far modern tax laws shall be permitted to impair and alter private contracts is a great question, which must be decided ultimately by the Supreme Court of the United States," adds: "Perhaps the sound conclusion is that governmental taxation, a thing always to be anticipated when contracts are made, does not impair the obligation of contracts within the meaning of the constitutional inhibition."

This we believe to be the "sound conclusion" where both parties to the contract are within the jurisdiction of the taxing power. The case put by the Chief Justice, that "a section of the excise law of 1864 authorized manufacturers who had existing contracts for the delivery of manufactured goods at the date of the law, to add the increased duties to the contract price, and collect them from the vendee, and this is now done," is not, we think, open to objection, as he seems to intimate; because both the vendor and the vendee being within the jurisdiction of the United States, it did not impair the obligation of the contract, but only added to it the duty, on the part of the vendor, to act as collector of the excise tax, and on the part of the vendee to pay it. The United States had a clear right and power to tax him, and the manner in which they did it was a matter of indifference.

Haight vs. Railroad Company, 6 Wallace, 15. Besides, the United States are not prohibited from passing laws impairing the obligation of contracts. This prohibition applies only to the States.

But when the contract is made, and is to be executed, out of the jurisdiction of the power claiming the right to tax, and the party to the contract whose interest in it is sought to be taxed, resides without the jurisdiction, and does not need to ask the aid of the State courts to enforce his contract, we submit that this principle does not apply, and that the obligation of such a contract is as much protected by the Constitution from being impaired by taxation as in any other way.

The provision of the Constitution of the United States is, that "no State shall pass *any* law impairing the obligation of contracts," and as has been said—Sedgwick on Stat. and Const. Law, p. 169:

"The clause in the Constitution referring to all contracts without exception, and it being settled that this includes executory as well as executed contracts, no difficulty seems to have presented itself in relation to the true construction of the clause in regard to agreements of a private character."

"All private contracts, in the ordinary legal application of that phrase, are understood to be embraced by it. If an agreement is such that if executory it can be enforced in a court of justice, or that if executed a remedy can be sought for its violation or infringement, then it is a contract to be protected, within the meaning of the constitutional clause."

And defining and illustrating the sense in which the term *impairing* the obligation of a contract is used in the Constitution, Judge Story says: "It is perfectly clear that any law which enlarges, abridges, or in any manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it. The manner or degree in which this change is effected, can in no respect influence the conclusion; for whether the law affect the validity, the construction, the duration, the discharge or the evidence of the contract, it impairs its obligation, though it may not do so to the same extent in all the supposed cases. Any deviation from its terms by postponing or accelerating the period of performance which it prescribes; imposing conditions not expressed in the contract, or dispensing with the performance of those which are a part of the contract, however minute or apparently immaterial in their effect upon it, impairs its obligation. *A fortiori*, a law which makes the contract wholly invalid, or extinguishes, or releases it, is a law impairing it." 3 Story on Const. § 1379.

A tax law, therefore, which does actually impair the obligation of a contract is as certainly prohibited by this provision as any other law, and the only question in any given case, is, was the party whose rights under a contract are affected by a tax law, passed as in this case, after the contract

was made, so situated with relation to the law making power, that he was bound to anticipate, and contract with reference to, the passage of such a law?

The principle we believe to be this: All citizens of any given State, in entering into contracts to be performed within such State, are bound to have regard to the laws of the State, then in force, which relate to or bear upon the subject; as well as to the fact that there are certain classes of laws, such as tax laws and police laws, which may be constitutionally applied to prior contracts; but a citizen of one State, entering into a contract lawful in his own State, which is to be performed there, is not bound in contracting, to have any reference to the laws of another State, present or future, whether they be tax laws or laws of any other kind.

An illustration of this principle is given in the effect of State insolvent laws. Thus, citizens of a given State, entering into a contract to be performed in such State, are bound by the fact of the existence of an insolvent law; but one who is a citizen of another State, even though contracting in the State where such law exists, with one of its citizens, is not bound to have any regard to such law and his rights cannot be effected by it, owing to the clause in the Constitution of the United States prohibiting any State from passing any law impairing the obligation of contracts. The State law has no jurisdiction over him, and his contract is not affected by it, because he is not a citizen of such State.—Ogden *vs.* Sanders, 12 Wheat., 213. Baldwin *vs.* Hale, 1 Wallace, 223. Story, Conflict of laws, (4 ed.,) sec. 341.

Judge Story says: "Under the peculiar structure of the Constitution of the United States, prohibiting the States from passing laws impairing the obligation of contracts, it has been decided that a discharge under insolvent laws of the State where the contract was made, will not operate as a discharge of the contract, unless it was made between citizens of the same State; it cannot, therefore, discharge a contract made with a citizen of another State."

He also lays it down as a maxim—Conflict of Laws, section 20—"That no State or nation can by its laws directly affect or bind property out of its own territory, or bind persons not residents therein, whether they are natural born subjects or others." And see sections 17, 18 and 19.

This tax law does attempt to bind and affect both persons and property out of its jurisdiction.

It is not, as we have already seen, a tax upon the railroad company, nor is it a tax upon their property, nor measured by its value. The value of the property of a given company has nothing to do with the amount of the tax to be collected by it from the bond-holders.

It is only when viewed in relation to the contract of the bondholder that

the properties of a tax can be ascribed to this levy. It is laid rateably upon the value of his contract, this value being determined by what it yields him. If then it is a tax at all, it is a tax upon his contract, upon its value, its proceeds.

The law then is aimed directly at the contract, and in effect, as well as in terms, it says to the debtor, "you shall not perform your contract according to its stipulations," and to the bondholder, "you shall receive a part only, and not the whole of that for which you contracted."

This would be unobjectionable, for the reason already stated, if both parties to the contract were within the jurisdiction, for it would be all the same, in fact and in principle, to retain it from the creditor, as to collect it from him after it was paid to him, and in either case he would receive credit for its payment—Haight *vs.* Railroad Company, above cited. The objection arises because of preventing him from receiving his stipulated interest, when if he did receive it, there would confessedly be neither right nor power to collect it from him as a tax.

The law could not be enforced directly against the bondholder, because he is not within the jurisdiction, nor against his property, for neither is it within the jurisdiction; hence there is no penalty imposed upon him for failing to comply with the law, nor any attempt at, or provision for, enforcing it against him, or against his property. But the debtor, being within the jurisdiction and power of the law, is required, on pain of having to pay the tax himself, with a penalty added, to violate his contract with the bondholder and force him to take a part of the interest due him in full satisfaction of the whole. This we contend is "impairing the obligation of the contract," between the company and the bondholder, and taxing persons and things beyond the jurisdiction of the State.

We claim, in short, that the bondholder, residing and contracting out of the State, and the place where the contract is to be performed being without the State, and being able to enforce his contract in the courts of the United States, without appealing to the courts of the State, can neither be expected nor required to anticipate tax laws of this State, when making his contract, and that therefore the principle stated by C. J. Woodward, which is undoubtedly sound when applied to citizens of the State, does not apply to him, and this tax law, which attempts to force him to accept part performance of his contract in lieu of full performance, would, if carried into effect, impair the obligation of his contract within the meaning of the constitutional inhibition, and is therefore, as to him, null and void.

But it is said that though the bondholder is beyond the jurisdiction of the State, his property is within it, and indeed, this is the principal ground upon which the decision in the case of Maltby *vs.* the Reading Railroad

Company is put by the court. They say "there must be jurisdiction over either the property or person of the owner, else the power cannot be exercised; but where the property is within our jurisdiction, and enjoys the protection of our State government, it is justly taxable, and it is of no moment that the owner who is required to pay the tax resides elsewhere."

We think this position rests upon a confusion of ideas and a confounding of things which are, in their nature, entirely distinct and separate, and that there is no proper sense in which the non-resident bondholder, as such, can be said to have any property within the State.

He does not own the property or the franchises of the corporation debtor, nor anything that has an actual *situs* within the State. The property mortgaged belongs entirely to the debtor, who has complete control over it, and it seems to us to involve a contradiction in terms, to speak of it as belonging in any sense to the non-resident creditor.

It is certainly as well settled as anything can be, in Pennsylvania, whatever the doctrine may be elsewhere, that a mortgage is only a lien or encumbrance on the land mortgaged, and that the mortgagee has no estate in the land. Thus, in Wilson *vs.* Shoenberger's executors, 7 Casey, 299, it is said by Woodward, J.: "It is the settled law of the Pennsylvania mortgage that though in form a conveyance of title, it is in reality, both at law and in equity, only a security for the payment of money or performance of other collateral contract." And in Edmondson *vs.* Nicholson, 10 Harris, 79, Lewis, J., says: "The mortgagee has no estate in the land. His mortgage is nothing but a security for a debt. It is only an incumbrance." So in Witmer's Appeal, 9 Wright, 463, it is said: "A mortgagee has no estate in the land, any more than a judgment creditor. Both have liens upon it, and no more than liens. This was expressly asserted in Assay *vs.* Hoover, 5 Barr, 35, and has been substantially, if not expressly, affirmed in many cases. Rickert *vs.* Maderia, 1 Rawle, 228; Edmondson *vs.* Nicholson, 10 Harris ,79; Wilson *vs.* Shoenberger's executors, 7 Casey, 299."

And although in Pennsylvania all possible contingent titles to land, accompanied with an estate, property, or real interest in the land, are subject to levy and sale on execution; Humphreys *vs.* Humphreys, 1 Yeates, 429; Sharpe *vs.* Sharpe, 12 Sargeant & Rawle, 12; Streaper *vs.* Fisher, 1 Rawle, 162; it has been settled, on the principle of want of interest or estate in the mortgagee, that the mortgaged premises cannot be taken in execution for his debt.—Rickert *vs.* Maderia, 1 Rawle, 329.

In the latter case, the court say, "a mortgage must be considered either as a *chose in action*, or as giving title to the land, and vesting a real interest in the mortgagee. In the latter case it would be liable to execution; in the former it would not, as it would fall within the same reason as a judgment bond or simple contract. If we should consider the interest of the

mortgagee as a real interest, we must carry the principle out and subject it to a dower, and to the lien of a judgment. The same objections which may be urged against one judgment being a lien on another judgment, will apply with equal force to the doctrine that a judgment is a lien on a mortgage. That a mortgage is but a *chose in action*, a mere evidence of debt, is apparent from the whole current of decisions."—p. 328.

This being the nature of the mortgage, it surely cannot be said that the non-resident holder and owner of a bond secured by mortgage in Pennsylvania owns any real estate there.

Does he, then, own any personal property within the State? He does not own the money lent, for that, as has been truly said by Mr. Justice Nelson, in Jackson *vs.* the Railroad Company, "belongs to the resident debtor, for which he is taxable." If, then, he owns neither the land bound nor the money lent, but merely the bond and mortgage, the choses in action which follow the person of the owner, and are actually in his possession without the State, we submit that he owns nothing within the jurisdiction of the State. Neither does he need, as has been argued, to invoke the aid of the courts of the State to reap the fruits of his security in case of the non-payment of the interest or principal of the bonds. By the express terms of the mortgages given by the plaintiff in error, the trustees therein named are authorized and, at the request of the bondholders, required, to sell the mortgaged premises, in default of payment, at a place outside of the State of Pennsylvania. See printed record, pp. 24-7-9.—And the courts of the United States have ample jurisdiction and power to give the non-resident bondholder all the judicial aid he may need.

These considerations have led the courts of those States where this question has been raised, to decide in favor of the position taken by the plaintiff in error. Thus, in State of Nevada *vs.* Earle, 1 Nevada State Reports, 397, it is decided that the State, under a statute imposing a tax, *inter alia*, on "money at interest, secured by mortgage," could not tax mortgages or bonds belonging to persons not citizens nor residents of the State, though the mortgages were a lien on lands within the State. The court say:

"The tax, however, upon money at interest secured by mortgage, is, in the opinion of this court, neither a tax on coin, which is taxed as tangible personal property, a tax on the land mortgaged, which is taxed at its value, without regard to the mortgage, nor a tax on the piece or pieces of paper upon which the note and mortgage are written, but it is a tax on a *chose in action;* in other words, it is a tax on the right which a party has to receive or collect a certain amount of money. *Choses in action* are intangible, and have no locality separate from the person possessing the power to enforce the right."

"All *choses in action* follow the person of the owner. No doubt the State may tax such rights when held by its citizens, but if a party lives in another State, this State has no jurisdiction or control over the person of such non-resident, and none over the *chose in action*, because it has no location or tangibility in this State. The same debt might be secured by separate and distinct mortgages in twenty States at the same time. If the recordation then of a mortgage in this State would fix the *situs* of the *chose in action* here, the recordation of other mortgages would fix it in nineteen other States at the same time, and each State would have a right to tax this same *chose in action* within its own borders, thus levying twenty annual taxes on the same property within the same year, which would be a manifest absurdity."

"The State can only tax such *choses in action* as belong to its own citizens or residents."

And in the case of the city of Davenport *vs.* The Mississippi and Missouri Railroad Company, 12 Iowa Reports, 539, the court held that mortgages owned by non-residents of the State could not be taxed within it.

The court say:

"The counsel in their argument say that it is not the defendants that they seek to tax, but it is the thing in their possession. If the mortgages are property in the possession of the defendants, the tax under the section referred to should be assessed in the name of the owner of the "thing" made subject to the taxation. We cannot concede, however, that it was the intention of the Legislature to tax mortgages when owned by non-residents of the State. Section three of said act provides that all property real and personal *within this State* is subject to taxation, &c., and mortgages and other securities are within the classes of property named. Is a mortgage, owned by a non-resident, property within this State, within the meaning of this section? A mortgage, so long as the right of redemption continues, is personal estate. Both in law and equity the mortgagee has only a chattel interest.—See Williard on Mortgages, vol. 1, page 163.—It is true that the *situs* of the property mortgaged is within the jurisdiction of the State, but the mortgage itself being personal property, a chose in action, attaches to the person of the owner.—See Story Confl. of Laws, section 379.—It is agreed by the parties that the owners and holders of the mortgages are non-residents of the State. If so, and the property of the mort gage attaches to the person of the owner, it follows that these mortgages are not property within the State, and if not they are not the subject of taxation."

"In Angell & Ames on Corporations, section 458, it is said: 'The general rule appears clearly to be that in regard to public taxes every person is

liable to be assessed for his personal property in the State of which he is an inhabitant; and stock owned in incorporated banks, &c., by non-resident holders thereof, is not subject to the taxing power of the State. Indeed, the stock is not a thing in itself capable of being taxed on account of its locality; and any tax imposed upon it must be in the nature of a tax upon income, and of necessity confined to the person of the owner, who, if he be a non-resident, is beyond the jurisdiction of the State, and not subject to its laws.'"

"In the case of the State (James Potter, prosecutor,) *vs.* Robert Ross, collector, &c., 3 Zabr., 517, in which the prosecutor, who was a citizen of Georgia, was residing temporarily in the State of New Jersey, and was the owner of a large amount of bonds of the Camden and Amboy railroad, which he had with his person,—the defendant, as collector, had levied a tax upon the prosecutor, under a law which enacted that all personal property within the State should be liable to taxation, and specified debts due from solvent debtors within or without the State."

"The Chief Justice, in his opinion, held that the law applied exclusively to the inhabitants of the State of New Jersey, and his reasoning in support of this opinion is substantially as follows:"

"1. Because every law must be presumed to primarily apply, when not otherwise clearly expressed, to the citizens of that State or the subjects of that government by which the law is enacted, and not to the citizens of other States or subjects of other governments."

"2. Because to hold otherwise would necessarily impose the burden of double taxation. 'It cannot be presumed,' says the Chief Justice, 'in the absence of clear and explicit enactment, that the Legislature designed to weaken the bonds of the Union by discouraging commercial intercourse between the citizens of our own and our sister States. The fair and reasonable presumption is that they designed to adopt a general principle, just and beneficial in its operations, viz: to make all property in action taxable at the domicil of its owner, and to apply the same principle to the citizens of our own and all other States."

And in the case of the State *vs.* Ross—cited above—it is further said:

"By the law under consideration, the Legislature have declared that all the property in action of every citizen of this State, wherever it may be situate, shall be liable to taxation. They have enacted that debts due from foreign debtors and stocks in corporations in other States, and all property in action, owned by citizens of this State, shall be taxed to the owner thereof. They have legislated upon the principle that property in action, having no visible locality, should follow the domicil of the owner, and be subject to taxation there. Adopting this principle in regard to their own citizens, it is not probable that the Legislature designed to repudiate it in regard to

the citizens of other States. Such a course of legislation, besides its tendency to provoke retaliatory legislation by other governments, would operate unjustly and oppressively upon every individual living in one State, and owning property in another, by subjecting him to double taxation. If a law be enacted in Georgia precisely similar to our own, it is certain that the prosecutor would be liable to taxation for his property as a citizen of that State, and if it be held liable to taxation in this State also, it must necessarily bear the burthen of double taxation; and on the other hand, under such a system of legislation, property owned in Georgia, by a citizen of this State, would be liable to the same burthen of double taxation."

So in People vs. Eastman, 25 California reports, 603; The court say: "This is an action to recover a tax levied in the county of Mariposa, under the revenue act of 1861, for the fiscal year 1863-64. At the time the tax was levied, the defendant was, and he ever since has been a resident of the city and county of San Francisco. The property taxed was a judgment of record in Mariposa county, foreclosing a mortgage held by defendant on lands situate in said county. The defendant had judgment, and plaintiff appeals."

"The question is, as to whether the judgment is properly taxable in Mariposa county. We think not. In the case of The People vs. Park, 23 Cal. 138, the property assessed was a mortgage upon lands in Mariposa county, held by a resident in San Francisco. In that case the tax was assessed under the act of 1860; but the provisions of that act, in all respects affecting the question under consideration, are substantially the same as in the act of 1861. It was held—and we think correctly—that the property was not assessable in Mariposa county. The property to be assessed in such cases is money at interest or debts. The money at interest, debt or obligation, is the principal thing, and the mortgage is only a security — a mere incident to the debt or obligation. The mortgage has no existence independent of the thing secured by it; a payment of the debt discharges the mortgage. The thing secured is intangible, and has no *situs* distinct and apart from the residence of the holder. It pertains to and follows the person. The same debt may, at the same time, be secured by a mortgage upon land in every county in the State; and if the mere fact, that the mortgage exists in a particular county, gives the property in the mortgage a *situs* subjecting it to taxation in that county, a party, without further legislation, might be called upon to pay the tax several times—for the lien for taxes attaches at the same time in every county in the State, and the mortgage in one county may be a different one from that in another, although the debt secured is the same."

And to the same effect is the opinion and judgment of the court in the

case of Latrobe, trustee, vs. The Mayor and City Council of Baltimore.—19 Maryland Reports, pp. 20–21, in which Cochran, J., says:

"This is an appeal from a judgment obtained in a suit at law, brought to recover taxes assessed on mortgages of property in the city of Baltimore, made to the appellant as trustee of the estate of Joseph Thornburg, deceased. At the time of the assessment and institution of the suit, the appellant was a resident of Howard county, the *cestuis que trust* being, at the same time, residents of Baltimore city, and the question as to the liability of the appellant for the taxes assessed, is the only one presented." * * * * * *

"Upon the principle that the possession of personalty follows the person owning the legal title, the mortgages, on the valuation of which the assessment of the taxes in this case was made, so far as they could be made the basis of an assessment, were beyond the jurisdiction of the appellee. The assessment, in such cases, is made upon the amount of the mortgage debt, and not upon the value of the property mortgaged to secure it. As the basis of the assessment is the amount of the debtor's obligation to the creditor, the recording of a mortgage in another county or district than that of the creditor's residence, collaterally securing its satisfaction, cannot have the effect of locating the debt where the mortgage is recorded."

"We think the taxes, sought to be recovered in this case, were assessed without authority, and therefore reverse the judgment."

The converse of the proposition for which we contend has been held by the Supreme Court of Pennsylvania, in a well considered opinion delivered in M'Keen *vs.* the County of Northampton, 13 Wright, 519, where it is clearly shown and expressly decided, that the owner of shares of stock in an incorporated company—and *a fortiori*, we say, a creditor of such company—has no title whatever in the real estate or other property of the company, and that such shares are taxable as the property of the stockholder, only in the State of which he is a resident. Justice Agnew, delivering the opinion of the court, says:

"The defendant below being a citizen of this State, it is clear he is subject personally to its power to tax, and that all his property accompanying his person, or falling legitimately within the territorial jurisdiction of the State, is equally within its authority. The interest which an owner of shares has in the stock of a corporation is personal. Whithersoever he goes it accompanies him, and when he dies his domicil governs its succession. It goes to his executor or administrator, and not to the heirs, and is carried into the inventory of his personal effects. When it is argued, therefore, that the foundry, machine shop, and other estate of the corporation, being within the State of New Jersey, are subject wholly to the same exclusive State jurisdiction there which we claim for this State over property

within its territory, another ownership is stated and a new issue introduced. But to that property the defendant below has no title, his title being in the shares he holds, and not in the property of the corporation. No execution against him there would sell a spark of right to it, nor would his heirs-at-law succeed to any estate in it. Unquestionably it may be taxed as the property of the corporation in New Jersey; but the ownership there is that of a corporation, the legal entity, and not of the natural persons who own the shares of its stock."

"We have authorities directly upon this question deciding the principle, though upon a different species of tax, the collateral inheritance tax—in Re Short's estate, 11 Harris, 63. There the decedent, a resident of Philadelphia, owned half a million of dollars in stocks, and corporations, of other States, and bonds of the State of Kentucky, and a bank deposit in New York, and all were held to be subject to the collateral inheritance tax here. Gibson, C. J., opens his opinion by stating: 'that Mr. Short's property out of the State subjected him to personal liability for tax assessed on it here in his life time is not to be doubted; the general rule is that the situs of personal property follows the domicil of the owner of it insomuch that even a creditor cannot reach it in a foreign country, except by attachment or some other process provided by the local law; certainly not by a personal action without appearance or something equivalent to it.' To the same effect is the case of Hood's estate, 9 Harris, 106, the difference of domicil merely leading to an opposite result."

This decision is undoubtedly correct. It was not referred to, either in argument or by the court, so far as appears by the report of the case, in Maltby vs. The Reading Railroad Company, 2 P. F. S., 140. And we do not see how it can be reconciled with that case—which certainly did not intend to overrule it—unless the same property can have a *situs* in two or more different States at the same time, for the same purpose precisely; which seems to us as impossible as that the same body should be in two places at the same instant.

Here then we have it clearly and distinctly declared that in Pennsylvania the general principle, that the *situs* of choses in action is determined by the residence of the owner, is recognized and applied in her tax laws; and it is certainly too plain for argument that upon this principle the tax claimed in this case cannot be sustained. Either this principle must be abandoned, and the opposite one adopted, that the *situs* is where the tangible property is situated, out of which the chose in action arose, as it were, which would be a new principle not recognized as law hitherto; or abandoning all principle, the law that might makes right must be adopted, and the rule applied in any

given case must depend upon the question whether the tangible property, or the chose of action, with the person of the creditor, is in the State.

The following quotation from the opinion of the Court of Appeals, in Hoyt *vs.* The Commissioners of Taxes, 23 N. Y., 230, delivered by Comstock, C. J., shows the impossibility of reconciling these two opposite principles. "The statute means one thing or the other. It cannot have double and inconsistent interpretations. And, as this is impossible, so we cannot, under and according to the statute, tax the citizen of Massachusetts in respect to his chattels here, and at the same time tax the citizen of New York in respect of his chattels having an actual *situs* there. In both cases the property must be 'within this State,' or there is no right to tax it at all. It cannot be true in fact, if a Massachusetts man owns two spans of horses, one of which draws his carriage at home, and the other is kept on his farm here, that both are within the State. It cannot be true by any legal intendment, because *the same intendment which locates one of them here must locate the other abroad, and beyond the taxing power.* It seems to follow, then, inevitably, that before we can uphold the tax which has been imposed upon the relator's property situated in New Orleans and New Jersey, we must first determine that if he resided there, and the same goods and chattels were located here, they could not be taxed as being within the State. Such a determination would, I am satisfied, contravene the plain letter of the statute, as well as all sound principles underlying the subject."

So, here, it cannot be true in fact if the bonds of a corporation of another State, held and owned by a resident of Pennsylvania, are in the State and subject to the jurisdiction and taxing power of the Legislature of Pennsylvania, that the bonds of a Pennsylvania corporation, held and owned by a resident of another State, are also within and subject to the same jurisdiction and power; and "it cannot be true by any legal intendment, because the same intendment which locates one of them here *must* locate the other abroad and beyond the taxing power." Therefore, we contend, since the Supreme Court of Pennsylvania have decided, by the well considered opinion quoted at length above, which is entirely in accordance with the current of their decisions and with the long continued uniform practice of the State in regard to taxation, as well as with the decisions of the courts of all the other States, that the stock and, *a fortiori*, the bonds held and owned by a resident of Pennsylvania, are within the jurisdiction and taxing power of the State, though the corporation and all its property is situated in some other State; that they are bound both by the fact and by legal intendment to hold—and if not they, this court for them—that the bonds of a Pennsylvania corporation, held by non-residents, as in this case, are not within the same jurisdiction and taxing power. In the language of the case in 3 Zabriskie, already cited, "they have legislated"—and adju-

dicated—"upon the principle that property in action, having no visible locality, should follow the domicil of the owner and be subject to taxation there. Adopting this principle in regard to their own citizens, it is not probable that the Legislature,"—or the court,—"designed to repudiate it in regard to citizens of other States. Such a course of legislation,"—or of adjudication,—"besides its tendency to provoke retaliation by other governments, would operate unjustly and oppressively on every individual living in one State and owning property,"—or holding bonds secured—"in another, by subjecting him to double taxation."

We think it much more probable, that the rule laid down in Maltby *vs.* The Railroad Company, was adopted hastily, without sufficient consideration, and without adverting to the consequences which would logically result from it, or to its antagonism to the principles already adopted by the court, and which had become a part of the settled law of the State. And hence we consider this a proper case for this court, on the principle laid down and enforced in the cases of Gelpeke *vs.* City of Dubuque, 1 Wallace, 175, and Butz *vs.* City of Muscatine, 8 Wallace, 575, to follow those decisions of the State court which best accord with its own decisions, with sound principle, and with the constitutional rights of citizens of other States.

We do not think that our objections to this tax, when imposed upon non-residents, are met by saying that the franchises and property of the debtor corporation are protected by the civil and military power of this State, and that taxation is the correlative of protection. All this is undoubtedly true; but it must be borne in mind that the franchises and property of the corporation themselves pay the taxes which are the correlative of the protection which they receive. The franchises and property of a corporation having a debt, are no more protected than those of one having no debt, and both pay taxes in the same proportion; and certainly the protection of the person and property of one, who is a citizen and resident of the State, is not the correlative of the taxation of another, who is neither a citizen nor resident, or of his property, which is not within the State. Besides, the tax on the bonds of a resident of the State is not levied on the ground of the protection given by the State to the corporation, its franchises and property, but on the ground of the protection accorded to the property of the bondholder himself, and the duty of every citizen to contribute to the necessities of the State. Hence, in taxing a resident, there is no occasion to inquire where his debtor resides, whether within the State or without. The tax is not paid with any reference to the debtor or his property, but is solely relative to the owner of the *choses in action*. This is clearly shown in the case above cited, and is undoubtedly correct in principle.

And in this point of view also the sustaining of the tax involves the incon-

sistency, if not absurdity, of putting it on one ground when it falls upon a resident, and another when upon a non-resident, though the law itself makes no distinction. That is to say, in order to uphold the tax on non-residents it must be claimed that the tax is in some sense on the property of the debtor, while as to the resident it is upon his *chose in action*, his ownership of the security for the debt, and because of the protection which his property and person enjoy from the State.

When it is said, therefore, that the *choses in action* of the non-resident are taxable and taxed because of the protection afforded to the property of his debtor, we think, as is said by Justice Agnew, in the case last above cited: "a new issue is introduced," and a new principle in the science of taxation is propounded.

But the law itself gives no countenance to the argument that it is based on the—as we consider it—self-contradictory ground of the ownership by the creditor, of the property of the debtor. It has none of the ordinary features of a tax law, nor is it encumbered with any of the provisions or machinery usually supposed to be necessary to the successful working of such a law. There is nothing in the nature of a levy or assessment, and no provision whatever for notice to or right of appeal by the non-resident bondholder; indeed, it is only incidentally that the law alludes to him at all, and only in connection with the, as it would seem, trifling circumstance that the contribution exacted must fall upon him.

It is a bare and bald command to the officers of the debtor company to "retain" part of the interest due to its creditors, and to pay it to the State. It enacts "that the president, treasurer or cashier of every company, except banks or savings institutions, incorporated under the laws of this Commonwealth, doing business in this State, which pays interest to its bondholders or other creditors, shall, before the payment of the same, *retain from said bondholders or creditors* a tax of five per centum on every dollar of interest paid as aforesaid, and shall pay over the same semi-annually to the State Treasurer for the use of the Commonwealth."

In the language of Lowrie, C. J., 3 Wright, 80, "such legislation seems hardly consistent with the usual comity, or political generosity, which we exercise in our relations with the citizens of sister States."

Such a tax is thus described by Chief Justice Redfield, in his American Railway Cases, 513: "It is a levy upon the corporation, to be paid by non-resident" bondholders "who have no notice of the proceedings, and where the whole proceedings are without any jurisdiction over them. It has been held that such a levy is void on general principles, it being in the nature of a decree of forfeiture or confiscation of property, or its profits or a portion of them, and the principle would be the same if it went the

whole extent of all the profits or all the property; and this wholly without jurisdiction. It seems nothing less than an arbitrary appropriation of private property, belonging to citizens resident abroad, to the public use of the State, when the owners are not notified of the proceedings or represented in the Legislature."

It is a levy or contribution, imposed by the State of Pennsylvania, on the income of citizens and residents of other States, when at the same time they are unquestionably liable to a tax upon the same income, in the States of their residence.

We contend that the judgment of the Supreme Court of the State should be reversed:

THIRD.—*Because the law is so antagonistic to the true principles of taxation, settled and adopted in Pennsylvania, as well as elsewhere, as to warrant the conclusion that it was not intended to apply to non-residents or their bonds, and that if so applied it is clearly unconstitutional.*

In the case of Butz *vs.* City of Muscatine, already cited, this court said: "In all cases brought here under the twenty-fifth section of the Judiciary Act, this court has never hesitated to determine for itself the construction and effect of any statute of a State, brought under review, without reference to the previous adjudications of the highest court of the State upon the subject. In the opinion delivered in the case of the Jefferson Branch of the State Bank of Ohio *vs.* Skelley—1 Black, 436—it was well asked: Of what value would the appellate power of this court be to the party aggreived if such were not the rule? In that case and in all other cases brought here, involving the same question, an act of the Legislature of Ohio was pronounced invalid, and the judgments of the Supreme Court of the State were reversed. Cases may be brought here from the Circuit Court of such a character that it is necessary to the right administration of justice that we should proceed upon the same principle in deciding them. Indeed, questions which are identical, may be brought here in both ways. Under such circumstances it will hardly be insisted that State adjudications are to control in the one case and not in the other. Our duty depends on the questions involved, and not upon the channel through which the case comes before us. Where the settled decisions in relation to a statute, local in its character, have become rules of property, these remarks have no application. In such cases, this court will, as it always has done, follow such adjudications. The cases of a different character, involving State statutes, in which the adjudications of the courts of the States in relation to them have been departed from by this court, extend in an unbroken series, from an early period, after its organization, to the present time.

Assuming then, that, notwithstanding the decision of the Supreme Court

of Pennsylvania in this case, the question whether this law was intended to apply to and impose a tax upon non-resident bondholders, is an open one; we argue that it was not intended so to apply. And we quote in support of this position, the proviso to the law, which is as follows: "*Provided*, That the principal sums from the interest of which the said tax is deducted shall not be assessed and taxed for State purposes in the valuation of personal property, or returned by county commissioners to the Board of Revenue Commissioners."

This proviso serves to illustrate the illegality and unconstitutionality of imposing this tax upon non-residents, and hence leads to the strong inference that this was not intended. It is a positive declaration of the legislative will that property of this description shall pay no other tax than the one here claimed. Yet the non-resident who is sought to be taxed here, cannot claim the protection of this law, and must, in the State and place of his residence, pay the same tax on this property as is paid by other like property held there. This shows how entirely he is beyond the jurisdiction of this law; it is as powerless to protect him as to tax him directly, and by being taxed indirectly, though the power which the State has over his debtor, he is subjected, because of his liability to the same kind of a tax, upon the same property, in the State of his residence, to a burden which is not imposed upon the bondholder who is a resident of the State. Ought we not, therefore, to conclude that no such injustice was intended, and that the law was not designed to apply to him?

As was said by Comstock, C. J., in Hoyt *vs.* The Commissioners of Taxes, cited above: "It is pertinent to inquire whether the Legislature intended to tax property thus situated. It 'shall not be assessed against any other person.'—Here, 'shall not be assessed and taxed for State purposes in the valuation of personal property.'—This prohibition would be impossible and absurd, in the case supposed of chattels having a *situs* in another jurisdiction. Yet the prohibition relates to the very thing which is the subject of the assessment, and from this I think it a very just inference that the Legislature in enacting the section had in view only personal estate within the State; in other words, the property which they had previously declared to be liable to taxation."

These considerations, we think, lead plainly to the conclusion that the Legislature of Pennsylvania did not intend this tax to be applied to non-resident bondholders. In the language of the Chief Justice of the State of New Jersey, already quoted—3 Zabr., 517—"It cannot be presumed, in the absence of clear and explicit enactment, that the Legislature designed to weaken the bonds of the Union by discouraging commercial intercourse between the citizens of our own and our sister States. The fair and reasonable presumption is, that they designed to adopt a general principle, just

and beneficial in its operation, viz: To make all property in action taxable at the domicil of its owner, and to apply the same principle to the citizens of our own and of all other States."

And we would suggest here, in passing, whether the double taxation which would fall upon the citizens of other States, if this law were applied to them, would be compatible with their rights under the clause of the Constitution, which guarantees to the citizens of each State all privileges and immunities of citizens of the several States?

We are well aware that it is settled in this State that taxation, to be legal, need not be equal, and that there may be what in one sense can be called double taxation, as of lands and mortgages upon them, or ground rents issuing out of them; though this is not really double taxation, because the lands and mortgages are different properties, of different species, and owned by different persons; but we do not know nor believe that it was ever intended to be decided, that two or more States, separate and independent, geographically, as well as politically, can each legally tax the same property in the same form, and as the property of the same person, for the very same purpose, each having the right to tax, and neither having the power to restrain the other from taxing. Yet unless such an exercise of the taxing power be legal and constitutional, this State cannot impose this tax upon non-resident bondholders; for it cannot be questioned that the State of their residence can lawfully tax them on account of their bonds.

The cases cited by the learned judge of the court below, to show that double taxation is not unlawful, are, none of them, instances of the kind of double taxation complained of in this case. They are instances where land and the mortgage secured on it, or the real estate of a corporation and its capital stock, or the capital stock of a corporation and the shares of stock owned by an individual, in such corporation, are taxed. In none of these instances is the same thing taxed twice. The land is real, the mortgage personal property. So, as stated by C. Justice Thompson, in Lycoming County *vs.* Gamble, 11 Wright, 110, "shares of stock and capital stock of a corporation are distinct and different things obviously," and so are the capital stock of a corporation and its real estate. Here, if the principle, or rather the practice, contended for by the Commonwealth, in this case, is correct, the same thing, in the hands of the same person, may be taxed in the same way, for the same purposes, in three different States, at the same time.

We contend that the judgment of the Supreme Court of the State of Pennsylvania should be reversed:

FOURTH—*Because, by the law declared valid by that judgment, the Legislature of Pennsylvania attempt to exercise jurisdiction beyond the State,*

and to affect contracts and rights of citizens of other States, which are protected by the Constitution of the United States and the judicial power granted to its courts.

The argument on this point is founded on the principle enunciated by Justice Johnson, in summing up the conclusion arrived at by the majority of the court in the case of Ogden *vs.* Saunders, 12 W., 369, as to the power of the States to pass insolvent laws, viz:

"When the States pass beyond their own limits, and the rights of their own citizens, and act upon the rights of citizens of other States, there arises a conflict of sovereign power, and a collision with the judicial power granted to the United States, which renders the exercise of such a power incompatible with the rights of other States, and with the Constitution of the United States."

In delivering the opinion in that case Justice Johnson said: 12 W., pp. 358–9: "As between its own citizens, whatever be the origin of the contract, there is now no question to be made on the effect of such a discharge; nor is it to be questioned, that a discharge not valid under the Constitution in the courts of the United States, is equally invalid in the State courts. The question to be considered goes to the invalidity of the discharge altogether, and, therefore, steers clear of that provision in the Constitution which purports to give validity in every State to the records, judicial proceedings, and so forth, of each State. * * * *

"The question is one partly international, partly constitutional. My opinion on the subject is briefly this: That the provision in the Constitution which gives the power to the General Government to establish tribunals of its own in every State, in order that the citizens of other States or sovereignties might therein prosecute their rights under the jurisdiction of the United States, had for its object an harmonious distribution of justice throughout the Union; to confine the States, in the exercise of their judicial sovereignty, to cases between their own citizens; to prevent, in fact, the exercise of that power over the rights of citizens of other States, which the origin of the contract might be supposed to give to each State; and thus to obviate that *conflictus legum*, which has employed the pens of Huberus and various others, and which any one who studies the subject will plainly perceive it is infinitely more easy to prevent than to adjust."

"These conflicts of power and right necessarily arise only after contracts are entered into. Contracts, then, become the appropriate subjects of judicial cognizance; and if the just claims which they give rise to, are violated by arbitrary laws, or if the course of distributive justice be turned aside, or obstructed by legislative interference, it becomes a subject of jealousy, irritation, and national complaint or retaliation."

And this court, in the case of Shaw vs. Robbins, applied the same doc-

trine to the decision of a State court, and reversed its judgment.—7 Curtis' Decisions, Sup. Ct., 226, note.

This was an action on several bills of exchange drawn by the plaintiff on the defendant, payable to plaintiff's order, and by the defendant duly accepted. At the time of the transaction the plaintiff was a citizen of Massachusetts, resident in that State, and the defendant a citizen of New York, and there resident. The action was brought in a State court, in Ohio, and the defendant relied on a discharge obtained in New York, under the provisions of the insolvent laws of that State. The highest court of law in Ohio gave judgment for the defendant, and the cause was brought before this Court by a writ of error.

Mr. Justice Johnson, delivering the opinion of the Court, said: "This is a contract between a citizen of New York and a citizen of Massachusetts. It only differs from Ogden vs. Sanders in this particular, that the action was brought in a State court; not the court of New York, but the court of another State. We think the decision in the case of Ogden vs. Sanders applies to this, and must govern its decision. The judgment below, therefore, must be reversed, and the cause remanded for such further proceedings as the law may require."

And the Supreme Court of the State of Massachusetts recognized the authority of the United States Supreme Court on this principle—Kelley *vs.* Drury, 9 Allen, 27; and following Baldwin *vs.* Hale, 1 Wallace, 223, overruled their own prior decisions which were in conflict with it. They say: "The decisions of the Supreme Court of the United States upon a question of this nature are guides to which we yield as the highest exponents of the law."

* * * * * * * *

"The general principle that our insolvent law could not affect citizens of other States, to whom liabilities were created that followed the person of the creditor, was well understood, and practically applied by the court in numerous cases. But the question whether a certificate of discharge obtained here could be pleaded in our courts in bar of a contract which by its terms was to be performed here, was thought by a majority of this court not to have been directly decided in any case presenting that precise point by the Supreme Court of the United States."

"The doubt has been whether a party who makes a contract with a citizen of Massachusetts, which is by its terms to be wholly performed here, does not subject himself to the existing State laws as to its performance, and as to what will discharge the contracting party from liability in reference to the same."

"The Supreme Court of the United States have, in the recent case of Baldwin *vs.* Hale, considered and decided this precise point. It was there

held that in the case of a promissory note made in this Commonwealth and to be paid here, but to a citizen of Vermont, such discharge was not a good defence to an action on the note in the Federal Courts." * * *

"We take the decision in the case of Baldwin *vs.* Hale in the broadest application of its doctrines, and give it full effect in the courts of Massachusetts in favor of a citizen of another State. The result is, that the discharge pleaded in bar of the present action cannot avail the defendant."

In conclusion, we respectfully submit that both principle and precedent require that the judgment of the Supreme Court of the State of Pennsylvania in this case should be reversed by this court.

J. W. SIMONTON,
Counsel for Plaintiff in Error.

Supreme Court of the United States.

NO. 408 DECEMBER TERM, 1870.

THE CLEVELAND, PAINESVILLE AND ASHTABULA RAILROAD COMPANY,

Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

Brief on behalf of Defendant in Error.

F. CARROLL BREWSTER,
Attorney General.
JAMES W. M. NEWLIN,
For Defendant in Error.

Supreme Court of the United States.

THE CLEVELAND, PLAINESVILLE AND ASHTABULA RAILROAD COMPANY,

Plaintiff in Error,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

COUNTER STATEMENT.

The statement of the plaintiff in error is correct as far as it goes, but it omits to state the very material fact, that by the original charter granted by the State of Pennsylvania to the Cleveland, Painesville and Ashtabula Railroad Company, the State expressly reserved to herself an unlimited power of taxation, and made it one of the terms and conditions of the grant of its corporate franchises. This act was approved May 5, 1854, and is to be found in the pamphlet laws of Pennsylvania for the year 1854, on pages 589 and 590. The phraseology is as follows:

SECTION 4. "That all the privileges and immunities granted to the said Cleveland, Painesville and Ashtabula Railroad Company in and by this act, are granted upon the following terms and conditions, namely: * *

* * * *Provided*, That the Commonwealth hereby reserves the right at any time that may be deemed necessary to protect her interests, to impose such taxes on the Cleveland, Painesville and Ashtabula Railroad Company, as may be imposed by any general tax law upon all the railroads of this Commonwealth."

Section 5 provides that if the duties of the corporation are neglected, or the terms and conditions of the grant not complied with, and are so found by a court of competent jurisdiction, that "then and in such case, all the

rights, privileges, powers and immunities granted to said company by this act, or intended so to be, shall forthwith cease and determine."

Section 1 of its charter subjects it to the general railroad law of Pennsylvania, of 19th February, 1849.—Purdon's Digest, p. 833, plac. 11, which provides * * * * * "and the Legislature hereby reserves the power to resume, alter or amend any charter granted under this act, and take for public use any road constructed in pursuance of such charter."

BRIEF OF ARGUMENT.

I. By the express words of the original charter granted by Pennsylvania to the Cleveland, Painesville and Ashtabula Railroad company, said company is made subject to the payment of any tax which the State may see fit to impose "by any general tax law, on all the railroads of the Commonwealth."

The act of 1868, under which the tax in question is claimed, is a "general tax law on all the railroads of the Commonwealth." It is also subject to the unrestricted power of repeal or amendment by the Legislature. This is notice to the bondholders.

II. This is not really a tax on the bonds, *i. e.* the written evidence of the company's debts, nor is it a tax on even the moneys loaned to the company, but it is in effect a tax on the *interest* on the moneys of the bondholders in the hands of this Pennsylvania company, and, therefore, within the jurisdiction and subject to the control of the State. What gives value to the bonds is the fact that the State has granted it corporate privileges and protects the same, and the mortgage is upon these franchises and rights and the whole property of the company. No discrimination is made against any class of companies. Again, by apportioning the tax according to the length of the road in Pennsylvania, as compared with its *whole* length in this State and Ohio, the Commonwealth avoids directly or indirectly taxing property outside of its limits. That the case of Jackson *vs.* The Railroad Company, 7 Wallace, 266, is not an authority upon any part of the present case is plain when it is examined in detail. For in the first place the court expressly declined deciding the general principle as to whether the State could tax the interest paid on these bonds as representing the money of the bondholders in the hands of a Pennsylvania corporation, and so being actually within the State. The language of the court on this part of the case is this—Mr. Justice Nelson delivered the opinion of the court:

"It has been argued for the plaintiff, that the acts of the Legislature of Pennsylvania, when properly interpreted, do not embrace the bonds or coupons in question; but it is not important to examine the subject; for, it is not to be denied; as the courts of the State have expounded these laws that they authorize the deduction, and, if no other objection existed against

the tax, the defence would fail. If this was an open question we should have concurred with the interpretation of the court below, which concurred with the views of the plaintiff's counsel. Nor shall we inquire into the competency of the Legislature of Pennsylvania to impose this tax, upon general principles, as we shall place the objection upon other and distinct grounds, though we must say that the tax upon the promissory note or bond, given by the resident debtor, and the withholding of the amount from the interest due to the non-resident holder, would seem to be a tax upon such non-resident. It is not a tax of the money lent, because that belongs to the resident debtor, for which he is taxable; it is a tax on the security, the bond, which is in the hands of the non-resident."

Although this broad general question, therefore, is not decided, but the case expressly made to turn upon another consideration, next to be examined, it is yet intimated *obiter* that the tax is liable to objection on the ground that the court seemed to suppose that it was not a tax on the money loaned, but on the bond itself, which is in the possession of the non-resident holder. It is submitted, on behalf of the State, that this is not a tax on the bond at all, nor on the principal moneys due, but it is a tax on the interest on the bonds, which interest is in the hands of this Pennsylvania company, and, therefore, within the jurisdiction of the State. The real ground upon which the case of *Jackson vs. The R. R. Co.*, was decided, is thus stated by the court:

The ground upon which we place the objection in this case, to the tax, is, in brief, that the bonds amounting to $2,000,000, of which those in question are a part, were issued by this company upon the credit of the line of road, its franchises and fixtures, extending from Baltimore to Sunbury, a given portion of which line lies within the jurisdiction of the State of Maryland. The old company, to which this line belonged, by the act of consolidation, transferred it, with its fixtures and all other interests connected therewith, including their stock, to the new organization, which have issued these bonds. The security therefor pledged and bound for the payment of them, and of the interest, embraces this Maryland portion of the road; and in case of failure to pay the principal or interest, this portion, with its franchises and fixtures would be liable to sale in satisfaction of the bonds and interest.

Now it is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that, to the extent of this Maryland portion of the road, she is taxing property and interests beyond her jurisdiction. This portion avails her tax roll as effectually as if it were situate within her own limits. The Maryland portion is not liable for the payment of any specified part or quantity of these bonds thus taxed, but is liable, with all its interests, for the whole amount, the same as that portion of the road within the State of

Pennsylvania. The bonds were an issue in the usual way, by this Northern Central Railway Company, and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds, and, therefore, none can be made in the taxation, with reference to the line within the respective jurisdictions of the States. If the tax is permitted as it respects one bond, it must be as it respects all.

Again, if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them. This is too apparent to require argument. The only difference in the two cases is, that the line of road is longer within the limits of the former than within the latter. Her tax would be a more marked one beyond the jurisdiction of the State, as the property and interest outside of its limits would be larger.

The consequence of this tax of three mills on the dollar, if permitted, would be double taxation of the bondholder. Each State could tax the entire issue of bonds, amounting, as we have seen, to $2,500,000.

The effect of this taxation upon the bondholder is readily seen. A tax of three mills per dollar of the principal, at an interest of six per centum, payable semi-annually, is ten per centum per annum of the interest. A tax, therefore, by each State, at this rate, amounts to an annual deduction from the coupons of twenty per centum; and if this consolidation of the line of road had extended into New York or Ohio, or into both, the deduction would have been thirty or forty. If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively by her own corporations.

Our conclusion on this branch of the case is, that to permit the deduction of the tax from the coupons in question, would be giving effect to the acts of the Legislature of Pennsylvania, upon property and interests lying beyond her jurisdiction.

In answer to this part of the decision, as sought to be applied to the case of the Cleveland, Painesville and Ashtabula Railroad Company, it is submitted on behalf of the Commonwealth—

a. That the company, by its charter, is expressly subject to the taxing power of the State, and its absolute power of repeal or amendment.

b. That this tax is not on the bonds, nor on their security, nor on the principal sum due, but simply on the interest upon the moneys loaned to the company and in their hands.

c. The tax in this case is under a general law, the amount of it is three mills upon the dollar. Now, supposing the court to be correct in holding this to be in effect, a tax on the security—*i. e.* the road and its franchises—it will be seen on examination that in the case of the Cleveland, Painesville and Ashtabula railroad that objection does not exist.

The State does *not* levy a tax of three mills on the interest on the bonded indebtedness of the company, but only on such proportion of three mills thereon as the length of the road in Pennsylvania bears to the whole length of the road in both States, so that even considering it a tax on the security it is only upon that portion of the security lying within the State of Pennsylvania.

The settlement reads as follows:

Funded debt.....	$2,500,000 00
Interest paid 7 per cent., tax 5 per cent. on $46,730, or $\frac{255}{953}$ parts of the total amount of interest paid, representing the proportion of the railroad of said company within the State of Pennsylvania.....	2,336 50

It is submitted that this is a conclusive answer to this part of the case. It is true, the court say, that the mortgage and bonds are upon the whole road and cannot be apportioned. We do not apportion *the bond*, but the *tax*. This also meets the objection that this is double taxation, and demonstrates that such is not the case.

We go a step further, however, and contend that even were it double taxation it would be unobjectionable on that point.—See *State vs. Newark*, 1 Dutcher, 317; *Tatem vs. Collector*, 3 Zabr., 429.

On the general question of the conflict of jurisdiction and of the *situs* of the subject matter—See *Story on the Conflict of Laws, (Redfield,)* § 550. "In the next place, let us consider the subject of jurisdiction in regard to property. It will be unnecessary to discuss the matter at large, as to personal property, since the general doctrine is not controverted, that, although movables are, for many purposes, to be deemed to have no *situs*, except that of the domicil of the owner; yet, this being but a legal fiction, it yields, whenever it is necessary, for the purpose of justice, that the actual *situs* of the thing should be examined. A nation within whose territory any personal property is actually situate has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer, and subject it to process and execution, and provide for and control the uses and disposition of it to the same extent that it may exert its authority over immovable property. One of the grounds upon which, as we have seen, jurisdiction is assumed over non-residents, is through the instrumentality of their personal property, as well as of their real property, within the local sovereignty; hence it is, that whenever personal property is taken by arrest, attachment or execution within a State, the title so acquired, under the laws of the State, is held valid in every other State, and the same rule is applied to debts due to non-

residents, which are subjected to like process under the local laws of a State."

III. The plaintiff in error contends that the officers of this corporation, not being citizens of, or residents in the State of Pennsylvania, nor any of the company offices located there, they cannot be obliged to become tax collectors for the State, under the penalty of personal responsibility.

It is answered for the State:

a. That the legal entity, known as the Cleveland, Painesville and Ashtabula Railroad Company, is the creature of the Legislature of Pennsylvania, and therefore, the duty in question can be imposed upon them, provided the tax itself is a lawful one.

b. The charter of the company requires a portion of its officers to be citizens of Pennsylvania. (See act of Assembly of Pennsylvania of May 5, 1854, Pamphlet Laws of 1854, pages 589 and 590.)

c. The question of the *personal responsibility* of the *officers* of the company, as distinguished from the corporation itself, does not arise in this case. The suit here is not against the officers, but against the company in its corporate capacity.

IV. This case differs in another respect from the case of *Jackson vs. The Railroad Company*, for there the suit was brought by a bondholder against the corporation; here the corporation having retained the tax, refuses to pay it over to the Commonwealth, and so retains it in its own possession.

V. The question, whether the imposition of the tax in dispute, impairs the obligation of a contract between the non-resident bondholder and the corporation, need not be separately considered. If the tax is in itself a lawful one, then the contract must be taken to have been made subject to the power of the State to impose it. The reservation of the taxing power in the charter, is of itself notice to all who may be affected by it.

VI. That the State intended to impose the tax in question, is expressly recognized in *Jackeon vs. R. R. Co.*, so that part of the case is not open. Whether the tax, having been imposed, is legal, has been already considered.

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Attorney General.

JAMES W. M. NEWLIN,
For Defendant in Error.

Supreme Court of the United States.

No. 31.

THE CLEVELAND, PAINESVILLE AND ASHTABULA RAILROAD COMPANY,

Plaintiff in Error

vs.

THE COMMONWEALTH OF PENNSYLVANIA,

In Error to the Supreme Court of Pennsylvania.

Brief on behalf of Defendant in Error.

F. CARROLL BREWSTER,
Attorney General.
JAMES W. M. NEWLIN,
For Defendant in Error.

Supreme Court of the United States.

THE CLEVELAND, PAINESVILLE AND ASHTABULA RAILROAD COMPANY,

PLAINTIFF IN ERROR,

VS.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF PENNSYLVANIA.

COUNTER STATEMENT.

The statement of the plaintiff in error is correct as far as it goes, but it omits to state the very material fact, that by the original charter granted by the State of Pennsylvania to the Cleveland, Painesville and Ashtabula Railroad Company, the State expressly reserved to herself an unlimited power of taxation, and made it one of the terms and conditions of the grant of its corporate franchises. This act was approved May 5, 1854, and is to be found in the pamphlet laws of Pennsylvania for the year 1854, on pages 589 and 590. The phraseology is as follows:

SECTION 4. "That all the privileges and immunities granted to the said Cleveland, Painesville and Ashtabula Railroad Company in and by this act, are granted upon the following terms and conditions, namely: * * * * * *Provided*, That the Commonwealth hereby reserves the right at any time that may be deemed necessary to protect her interests, to impose such taxes on the Cleveland, Plainesville and Ashtabula Railroad Company as may be imposed by any general tax law upon all the railroads of this Commonwealth."

Section 5 provides that if the duties of the corporation are neglected, or the terms and conditions of the grant not complied with, and are so found

by a court of competent jurisdiction, that "then and in such case, all the rights, privileges, powers and immunities granted to said company by this act, or intended so to be, shall forthwith cease and determine."

Section 1 of its charter subjects it to the general railroad law of Pennsylvania, of 19th February, 1849. Purdon's Digest, p. 838, plac. 11, which provides * * * * * "and the Legislature hereby reserves the power to resume, alter or amend any charter granted under this act, and take for public use any road constructed in pursuance of such charter."

This action is upon a settlement made by the Auditor General of Pennsylvania, against the plaintiff in error, for the tax to be retained by them from the interest payable to their bondholders.

The tax is imposed by the act of Assembly of Pennsylvania, of May 1, 1868. Purdon's Digest, page 1537, placetum 28, as follows:

"The president, treasurer, or cashier of every company, except bank or savings institution, incorporated under the laws of this Commonwealth, doing business in this State, which pays interest to its bondholders or creditors, shall, before the payment of the same, retain from said bondholders or creditors, a tax of five per centum upon every dollar of interest paid as aforesaid, and shall pay over the same semi-annually, on the first days of July and January, in each and every year, to the State Treasurer, for the use of the Commonwealth; and every president, treasurer or cashier as aforesaid, shall annually, on the thirty-first day of each December, or within thirty days thereafter, report to the Auditor General, under oath or affirmation, stating the entire amount of interest paid by said corporation to said creditors during the year ending on that day, and thereupon the Auditor General and State Treasurer shall proceed to settle an account with said corporation as other accounts are now settled by law, and in the settlement of said accounts, the persons aforesaid shall be allowed the same commission or compensation, as is now allowed by law to county treasurers, and in case the said president, treasurer or cashier shall neglect or refuse to make the report required by this section, within sixty days after the time specified, he shall forfeit to the State the amount of his commission for such failure or neglect: *Provided*, That the principal sums from the interest of which the said tax is deducted shall not be assessed and taxed for State purposes in the valuation of personal property or returned by county commissioners to the Board of Revenue Commissioners."

This statute of May, 1868, is a consolidation act, and is practically simply a re-enactment of the existing acts of April 30, 1864, and April 29, 1844.

The act of April 30, 1864, section 2, (pamphlet laws of Pennsylvania, 218,) directs that officers of corporations which pay interest to their depositors, bondholders or other creditors, "upon which, by the laws of this

Commonwealth, a State tax is imposed, shall, before payment of the same, retain from said depositors, bondholders or creditors the amount of State tax imposed by existing laws, and shall pay over the same to the State Treasurer."

The act of April 29, 1844, section 32, (pamphlet laws, 497,) provides that "all real estate, * * * * also all mortgages, money owed by solvent debtors, whether by promissory note, penal or single bill, bond or judgment, * * * * and all public loans or stocks whatsoever, except those issued by this Commonwealth, * * * * shall be valued and assessed to taxation for the purposes in this act mentioned, and for all State and county purposes whatsoever."

Section 34 of the same act, fixes the amount of the tax at "three mills on every dollar of the value thereof."

The company was organized in Pennsylvania under a special act of Assembly for that purpose, approved May 5, 1854.—Pamphlet Laws of Pennsylvania, 588. (Transcript, page 12.)

It will be seen that not only does the act of Assembly, so incorporating this company in Pennsylvania, reserve to the State the unrestricted power of taxation, but at the time the company was organized, and the bonds in question issued, the act of April 29, 1844, was in force. The Supreme Court of Pennsylvania has uniformly held that corporation bonds can be taxed under that act, and the act of April 30, 1864, simply regulates the manner in which that tax shall be collected. It has further been explained that the act of May 1, 1868, is a consolidation act, and that the tax imposed thereby is exactly the same as that formerly collected under the acts of April 29, 1844, and April 30, 1864.

The tax was apportioned—only such proportion thereof being charged as the length of the road in Pennsylvania bears to its whole length in that State and beyond it.

It is contended here by the plaintiff in error:

1. That the Pennsylvania acts do not authorize the collection of this tax.

2. That it cannot be apportioned according to the length of the road in Pennsylvania, and that the road being security for the bonds, and lying partly beyond Pennsylvania, that State cannot tax the interest payable on these bonds, because, it is said, that this would be taxing property outside of her borders.

3. That nearly all the bonds are held out of the State, that they are *choses in action* and follow the domicile of the non-resident owner; that they have no *situs* in Pennsylvania, and the interest payable on them cannot be taxed there.

4. That the acts of Assembly are unconstitutional as being laws impair-

ing the validity of a contract, *i. e.* the engagement of the company to pay a fixed rate of interest to its bondholders.

5. That the tax is assessed for the whole of the year 1868, and the act was not passed until May 1st of that year.

6. That the officers of the company are neither citizens nor residents of Pennsylvania, and cannot be made tax collectors for the State.

BRIEF OF ARGUMENT FOR DEFENDANT IN ERROR.

I. *As to the first and fifth objection, viz: That the act of Assembly of Pennsylvania does not authorize the tax claimed thereunder*—it is a sufficient answer to say that the State courts have decided that these acts do impose the tax, and this being a question of the construction of State statutes the Supreme Court of the United States is bound by their decisions. Besides this court has expressly recognized the construction so put upon the original statutes of April 29, 1844, and April 30, 1864, in the case of *Railroad Company vs. Jackson*, 7 Wallace, 266. Mr. Justice Nelson delivering the opinion of the court, said: "It has been argued for the plaintiff, that the acts of the Legislature of Pennsylvania, when properly interpreted, do not embrace the bonds or coupons in question; but it is not important to examine the subject; for, it is not to be denied, as the courts of the State have expounded these laws, that they authorize the deduction, and, if no other objection existed against the tax, the defence would fail."

II. It is further objected that the tax if imposed at all cannot be apportioned according to the length of the road in Pennsylvania. It is submitted (*a*) that although the State acts do not in terms authorize any apportionment, yet inasmuch as the accounting departments in assessing the tax have uniformly apportioned it, and as their action has been confirmed by the State courts it becomes a part of the statutes with the same force as if contained in the very text of the laws, and that this court must therefore consider these laws as if they had by express words directed the tax to be apportioned in the manner indicated.

M'Keen vs. Delancey's Lessee, 5 Cranch, 32–3, Marshall, C.J.: Under act of 1715 of Pennsylvania, requiring deeds to be acknowledged before a justice of peace of county where lands lie, it had been an established practice to acknowledge deeds before a justice of the Supreme Court, although the act of 1715 did not authorize such a practice. This was held to be a correct exposition of the statute as it had long prevailed, and as such binding on the Supreme Court of the United States.

MARSHALL, C. J.

Elmendorf vs. Taylor, 10 Wheaton, 160. This court respects the decisions of the State courts upon their local statutes, in same manner as the State courts are bound by the decisions of this court in construing the constitution, laws and treaties of the Union.

The courts of every government have the exclusive authority of construing its local statutes, and their construction will be respected in every other country.

The language of the Chief Justice is very strong in this case on this point, and others. It involved a question of title to real estate, yet the judge makes no distinction in his opinion, but includes all *statutes* in his declaration as to the binding force of local construction.

Shelby vs. Guy, 11 Wheaton, 361. The words "beyond seas" in statute of limitation construed according to decision of the State court. Although the same words may have received different construction in different States, "a fixed and received construction by a State in its own courts makes a part of the statute law."

Jackson vs. Chew, 12 Wheaton, 153. A case of adoption of local law of real property. This court adopts such local laws, whether founded upon construction of statutes of State or upon the unwritten law.

Bell vs. Morrison, Peters, 359–60. A question of construction of statute of limitations of Kentucky. The statute substantially same as that of 21 James, ch. 16, with exception of substitution of five years for six. The English decisions were produced to illlustrate true construction of statute. The court held them not to be conclusive authority. "If, therefore, upon examination it shall be found that the doctrines of the Kentucky courts, upon this subject, are irreconcilable with those deduced from the statute of James, this court would, in conformity with its general practice, follow the local law and administer the same justice which the State court would administer between the same parties."

JUSTICE STORY.

Green vs. Neal's Lessee, 6 Peters, 291, construes statute of limitations of Tennessee according to latest decision of its Supreme Court over ruling, Wheaton, 476, and 2 Peters, 241, because the Supreme Court of Tennessee has finally decided the construction adversely to them, a rule of real property.

Nesmith vs. Sheldon, 7 Howard, 818. A question under constitution of Michigan, arising out of incorporation of a banking company, without necessary two-thirds vote in Legislature. The court held the act of incorporation void, because "the Supreme Court of State had so construed its constitution, and it is the established doctrine of this court that it will adopt and follow the decisions of the State courts in the construction of

their own statutes where that construction has been settled by the decision of their highest judicial tribunal."

CH. J. TANEY.

Rice vs. Railroad Company, 1 Black, 359. In ascertaining the meaning or effect of a State statute the rules of construction are borrowed from the common law, except in cases where the courts of the State have otherwise determined.

Sumner vs. Hicks, 2 Black, 533. An assignment for benefit of creditors held void by State court under its act of Assembly. "In cases like this, involving the construction of a State statute, this court is governed by the judgment of the highest judicial authority of the State."

Leffingwell vs. Warren, 2 Black, 599. A real estate title case, statute of limitations pleaded, held. The courts of United States bound to recognize statute of limitations by judiciary act. "The construction given to State statute by highest judicial tribunal of such State is regarded as part of statute, and is as binding on the courts of United States as the text. If the highest judicial tribunal of the State adopt new views as to the proper construction of a statute and reverse its former decisions, this court will follow the latest settled adjudications."

Christy vs. Prigeon, 4 Wallace, 197. Land title case. The interpretation within the jurisdiction of a State of a local law becomes part of that law, as much so as if incorporated in the body of it by the Legislature. If different interpretations are given in different States to a similar law, that law, in effect, becomes, by interpretations, so far as it is a rule for action by this court, a different law in one State from what it is in another.

Gut vs. State, 9 Wallace, 35. The decision of the highest court of a State, that an act of the State is not in conflict with a provision of its Constitution is conclusive upon this court.

Insurance Co. vs. Treasurer, 11 Wallace, 204. "We have repeatedly held that the construction of State statutes belongs to the State courts, and is not a federal question, which we can revise in a writ of error to a State court. It is true, if a State court gives such a construction to a State statute, as to make it conflict with the Constitution or laws of United States, and sustains its validity after giving it such construction, and thereby deprives a party of his rights under the said Constitution or laws, then a federal question is raised, and we can review the decision on the point of the validity of the statute."

The two following cases have been cited by the plaintiff in error as limiting this rule, but it will be seen that, on the contrary, the general rule is strictly upheld by them:

Gelpecke vs. City of Dubuque, 1 Wallace, 206. It is the settled rule of

this court, in the construction of State statutes and State constitutions, to follow the decisions of the highest State courts; but there have been heretofore, in the judicial history of this court, many exceptional cases, as doubtless there will be hereafter. In this case there were early decisions of State court overruled by late ones, and the earlier decisions were held right and later ones disregarded, the court saying, "It is insisted the court should follow the latest adjudication in cases involving construction of State statute, or constitution should be followed. * * * * * It cannot be expected that this court will follow every such oscillation, from whatever cause arising, that may possibly occur. The earlier cases are sustained by reason and authority, and are in harmony with adjudications of sixteen States of the Union." So this was evidently one of the "exceptional cases" mentioned in opinion of court.

Justice Miller dissented, page 210. "The general principle is not controverted by the majority, that to the highest courts of the State belongs the right to construe its statutes and its Constitution, except where they may conflict with the Constitution of the United States, or some statute or treaty made under it."

"But while admitting the general principle thus laid down, the court says it is inapplicable to the present case, because there have been con-
"flicting decisions by the Supreme Court of Iowa on this very point, &c."

Page 214.—Can see no difference between rule of property and a matter of contract, so far as this question goes.

Page 220.—The step taken by this decision "is a usurpation of the right which belongs to the State courts, to decide as a finality upon the construction of State constitutions and State statutes."

Butz vs. City of Muscatine, 8 Wallace, 575.—Where a question involved in the construction of a State statute affects those remedies of creditors which are protected by the Constitution of the United States, this court will use its judgment on the meaning of a statute, regardless of the decisions of the State court.

Page 584.—"If the construction ultimately given to the statute had preceded the issuing of the bonds, and become the settled law of the State before that time, the case, as regards this point, would have presented a different aspect."

Miller, J., and Chase, C. J., dissented.

(b) *The apportionment* is of the *tax* and not of the *bonds*, i. e. the State imposes on the interest payable on each bond such a proportion of a tax of three mills on the dollar thereof as the length of the road in Pennsylvania bears to its whole length. In *Railroad Company vs. Jackson*, 7 Wallace, 266, Mr. Justice Nelson, in referring to this appointment, says: "The Maryland portion is not liable for the payment of any specified part or

quantity of these bonds thus taxed, but is liable, with all its interests, for the whole amount, the same as that portion of the road within the State of Pennsylvania. The bonds were an issue in the usual way, by this Northern Central Railway Company, and the security given by mortgage on the entire line of the road. No portion of the bonds belong to one part more than to another. No severance was made of the bonds, and, therefore, none can be made in the taxation, with reference to the line within the respective jurisdictions of the States. If the tax is permitted as it respects one bond, it must be as it respects all."

Now the State does not tax one bond and exempt another, does not sever the bonds, and the objection above suggested is clearly not applicable.

Neither does Pennsylvania tax thereby property out of her jurisdiction, because even were the tax on the security and not on the interest on the bonds the apportionment made would exactly and equitably meet the difficulty, and it would only be a tax on so much of the security as is actually in Pennsylvania.

III. For the defendant in error it is contended that the place of residence of the bondholders is immaterial. The tax does not discriminate against non-residents, and further it is levied neither on the security—the road—nor on the *chose in action*—the bond—but upon the interest payable by the defendant, a Pennsylvania corporation, which it is directed to withhold and pay to the State. This interest money is in the actual possession of the corporation, and it is undeniable that it might be made a garnishee and the money be attached in its hands by the creditors of the bondholders. Even if the tax were directly upon the *chose in action* the proposition advanced by the plaintiff in error, that the thing taxed has no *situs* of its own, but follows the domicile of the non-resident holder and cannot be taxed elsewhere, is founded on a fiction of law which the authorities abundantly show is not applicable to the questions of taxation. This fiction is only intended for the convenience of transfer and for distribution in the settlement of decedents estates. It prevails even in these cases only when not inconsistent with the local laws. The taxing power is an inherent attribute of sovereignty, and operates whenever either the person or the thing is within the jurisdiction.

In this case the thing—*i. e.* the interest money—has a tangible *situs* in Pennsylvania, and can be taxed there, and the State may compel the corporation to act as its agent in the collection of the tax.

In *R. R. Co. vs. Jackson*, 7 Wallace, 266, this court expressly declined considering this question. Mr. Justice Nelson there said: "Nor shall we inquire into the competency of the Legislature of Pennsylvania to impose this tax, upon general principles, as we shall place the objection upon

other and distinct grounds, though we must say that the tax upon the promissory note or bond, given by the resident debtor, and the withholding of the amount from the interest due to the non-resident holder, would seem to be a tax upon such non-resident. It is not a tax of the money lent, because that belongs to the resident debtor, for which he is taxable; it is a tax on the security, the bond, which is in the hands of the non-resident."

The following authorities fully sustain the positions assumed here for the defendant in error:

See *Story on the Conflict of Laws*, (Redfield,) § 550. "In the next place, let us consider the subject of jurisdiction in regard to property. It will be unnecessary to discuss the matter at large, as to personal property, since the general doctrine is not controverted, that, although movables are, for many purposes, to be deemed to have no *situs*, except that of the domicil of the owner, yet, this being but a legal fiction, it yields, whenever it is necessary, for the purpose of justice, that the actual *situs* of the thing should be examined. A nation within whose territory any personal property is actually situate has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer, and subject it to process and execution, and provide for and control the uses and disposition of it to the same extent that it may exert its authority over immovable property. One of the grounds upon which, as we have seen, jurisdiction is assumed over non-residents, is through the instrumentality of their personal property, as well as of their real property, within the local sovereignty; hence it is, that whenever personal property is taken by arrest, attachment or execution within a State, the title so acquired, under the laws of the State, is held valid in every other State, and the same rule is applied to debts due to non-residents, which are subjected to like process under the local laws of a State."

Green vs. Vanbuskirk, 7 Wallace, 139. "But this fiction (*i. e. situs* personal property) is by no means of universal application, and as Judge Story says, "yields whenever it is necessary for the purpose of justice that the actual *situs* of the thing should be examined;" * * * * and always yields to "laws for attaching the estate of non-residents, because such laws necessarily assume that property has a *situs* entirely distinct from the owner's domicile." If New York cannot compel the personal property of Bates (one of her citizens) in Chicago to contribute to the expenses of her government, and if Bates had the legal right to own such property there, and was protected in its ownership by the laws of the State; and as the power to protect implies the right to regulate, it would seem to follow that the dominion of Illinois over the property was complete, and her right per-

fect to regulate its transfer and subject it to process and execution in her own way and by her own laws."

National Bank vs. Commonwealth, 9 Wallace, 360. "But it is strongly urged that it is to be deemed to be a tax on the capital of the bank, because the law requires the officers of the bank to pay this tax on the shares of its stockholders, whether the State has the right to do this we will presently consider, but the fact that it has attempted to do it, does not prove that the tax is anything else than a tax on shares. It has been the practice of many of the States for a long time to require of its corporations thus to pay the tax levied on their shareholders. It is the common, if not the only mode of doing this in all the New England States, and in several of them the portion of this tax which should properly go as the shareholders contribution to local or municipal taxation is thus collected by the State of the bank and paid over to the local municipal authorities. In the case of shareholders not residing in the State it is the only mode in which the State can reach their shares for taxation. We are, therefore, of opinion that the law of Kentucky is a tax upon the shares of the stockholder. If the State cannot require of the bank to pay the tax on the shares of its stock it must be because the Constitution of the United States or some act of Congress forbids it. There is certainly no express provision of the Constitution on the subject."

"*St. Louis vs. Ferry Company*, 11 Wallace, 428. The controversy relates to taxes imposed by the city upon the ferry-boats of the defendants, used in conveying freight and passengers across the Mississippi river between the city of St. Louis and the opposite Illinois shore. The company was required to pay a specific sum for a license, and a tax was imposed upon its wharf-boat attached to the city landing. Both were duly paid. Payment of the taxes upon the ferry-boats was refused, and the several suits consolidated into the one before us were instituted by the city to recover the amount claimed to be due.

"In the jurisprudence of the United States, a corporation is regarded as in effect a citizen of the State which created it. It has no faculty to emigrate. It can exercise its franchises extra-territorially, only as far as may be permitted by the policy or comity of other sovereignties. By the consent, express or implied, of the local government, it may transact there any business not *ultra vires*, and "like a natural person may have a special or constructive residence, so as to be charged with taxes and duties or be subjected to a special jurisdiction." It is for the local sovereign to prescribe the terms and conditions upon which its presence by its agents, and the conducting of its affairs, shall be permitted.

"It has been said that the power of taxation for the purposes of the Commonwealth is a part of all governmental sovereignty, and is insepara-

ble from it. It is for the Legislature to decide what persons and property shall be reached by the exercise of this function, and in what proportions and by what processes and instrumentalities taxes shall be assessed and collected. The authority extends over all persons and property within the sphere of its territorial jurisdiction. When called into activity there can be no limit to the degree of its exercise, except what is found in the wisdom of the law making power, and the operation of those conservative principles which lie at the foundation of all free government.

"Where there is jurisdiction neither as to person nor property the imposition of a tax would be *ultra vires* and void. If the Legislature of a State should enact that the citizens or property of another State or country should be taxed in the same manner as the persons and property within its own limits and subject to its authority, or in any other manner whatsoever, such a law would be as much a nullity as if in conflict with the most explicit constitutional inhibition. Jurisdiction is as necessary to valid legislative as to valid judicial action.

"In the eye of the law personal property for most purposes has no locality. *Mobilia sequutur personam; immobilia situm. Mobilia non habent sequelam.* In a qualified sense it accompanies the owner wherever he goes, and he may deal with it and dispose of it according to the law of his domicile. If he die intestate, that law, wheresoever the property may be situate, governs its disposal and fixes the rights and shares of the several distributees. But this doctrine is not allowed to stand in the way of the taxing power, in the locality where the property has its actual *situs*, and the requisite legislative jurisdiction exists. Such property is undoubtedly liable to taxation there in all respects as if the proprietor were a resident of the same locality. The personal property of a resident at the place of his residence is liable to taxation. Whether the personal property of a resident of one State, situate in another, can be taxed in the former, is a question which in this case we are not called upon to decide.

"Upon looking into the enactments under which the taxes in question were assessed, it is obvious that their purpose was not to tax the property through the proprietor, but to tax the things themselves by reason of their being 'within the city.' The point for us to decide, therefore, is whether they are covered by legal provisions under which the taxes were imposed. If the taxing officer acted without authority, the taxes were invalid, and the city is not entitled to recover in this action.

"The boats were enrolled at the city of St. Louis, but that throws no light upon the subject of our inquiry. The act of 1789, section 2, and the act of 1792, section 3, require every vessel to be registered in the district to which she belongs, and the fourth section of the former act and the third section of the latter, declare that her home port shall be that at or

near which her owner resides. The solution of the question, where her home port is, when it arises, depends wholly upon the locality of her owner's residence, and not upon the place of her enrolment.

"The company has an office in Illinois. Its minor officers, such as engineers and pilots, lived in Illinois, where its real estate, including a warehouse, was situated. The company had also an office in St. Louis. Its president and vice president and other principal officers lived in the city, and there the ordinary business meetings of the directors were held, and the corporate seal was kept. The court found that the boats, when not in actual use, were laid up by the Illinois shore, and were forbidden by a general ordinance of the city of St. Louis, regulating ferries and ferry-boats, to remain at the St. Louis wharf or landing longer than ten minutes at a time. A tax was paid upon the boats in Illinois. Their relation to the city was merely that of contact there, as one of the termini of their transit across the river in the prosecution of their business. The time of such contact was limited by the city ordinance. Ten minutes was the maximum of the stay they were permitted to make at any one time. The owner was, in the eye of the law, a citizen of that State, and from the inherent law of its nature, could not emigrate or become a citizen elsewhere. As the boats were laid up on the Illinois shore when not in use, and the pilots and engineers who ran them lived there, that locality, under the circumstances, must be taken to be their home port. They did not so abide within the city as to become incorporated with and form a part of its personal property. Hence they were beyond the jurisdiction of the authorities by which the taxes were assessed, and the validity of the taxes cannot be maintained. In our opinion, the facts found are sufficient to support the judgment."

Denning Duer vs. Small, 7 *Am. Law Reg.*, *p.* 500, *et. seq.*: Statute of New York, that all persons doing business in the State should be taxed upon their capital invested, and that *non-residents* shall be so taxed the same as if they were residents.

It was objected that personal property has no *situs* but that of its owner's domicil, and in this case, the latter being a resident of New Jersey, the tax could not be collected. Held, the tax was lawful.

Iugersoll, J., (U. S. C. C. Southern Dist. of N. Y.,) page 501: "The property of a non-resident within the limits of a State, no matter whether the property be real or personal, and no matter where the owner has his domicile, is equally protected by the laws with the property of the resident. There would appear, therefore, to be no good reason why it should not equally pay in taxes for such protection." * * * * "The laws of the State, by virtue of which the taxes complained of were imposed, declare that all personal estate invested by a non-resident owner in business within the State, (and who by such investing calls upon the State for protection

to such property,) shall be assessed and taxed the same as if it were invested by residents, * * * * * pp. 502–3. If a non-resident does not like to pay for such security and protection, he can withdraw his personal property from the State, and thus free himself from such payment. There is no law which compels him to put his property under the protection of the laws of a State of which he is not a citizen or a resident. But while he asks and demands protection from the law, there is no good reason why he should demand that the property of the resident should pay for it; and there is no higher law of the United States which gives a non-resident a right to demand that the property of the resident citizen should pay for the protection afforded by the laws to the property of the non-resident. The equal immunities and privileges secured to the 'citizens of each State" within the 'several States,' does not demand such a requirement as this. * * * * The chief reason urged why personal estate is not subject to the same rule (as real estate) is, that the rule of law is that personal estate follows the person of the owner, and that therefore it may be taxed in the State where the owner is domiciled. There is no allegation in the bill that the personal estate of the complainant, invested by him in business within this State, has been taxed in New Jersey, the State of his domicile. But if it were so taxed, it would not follow that it could not be taxed in the State where it actually was, and where protection was actually afforded it. If a non-resident owner of real estate should be taxed in the State of his domicile, on an assessment of what he was worth, which should include the value of the real estate which he owns in another State, or if he should be assessed upon his income, which included the rent of such real estate, that would be no good reason why the State in which the real estate was, and which actually affords the protection of its laws to it, and by which protection he would be able to receive rent, should not have the right to compel such real estate to contribute to the expense and cost of such protection actually afforded."

"Bank stock is personal estate. According to the rule of law, it follows, with other personal property, the person of the owner. Such stocks whether owned by a resident or non-resident, is usually taxed in the State where the bank is located. It is believed that laws taxing such stock are not obnoxious to the charge of being opposed to any constitutional law, either State or national. It would seem to be enough that the property of a non-resident, whether that property be real or personal, should be put upon an equality in respect to taxation with the property of a resident, without requiring that it should have greater privileges." Cites *Catlin vs. Hull*, 21 Vermont, 152.

Catlin vs. Hull, 21 Vermont, 152. Debts due from solvent debtors upon promissory notes, are personal estate within the statutes of this State.

In this case, one H., who resided in New York, owned certain property, consisting of debts due from solvent debtors, resident in this State, evidenced by promissory notes; and he appointed the plaintiff, who was also a resident of this State, his agent, to control and manage the property, and collect and re-loan from time to time, as he should think proper, and allowed the plaintiff a specified salary for so doing. And it was held that the Legislature of this State had power to enact a law, subjecting property so situated, to taxation, and that the property was taxable under the statute of October 30, 1844, and that it was property set to the list of the plaintiff as "agent" of H., in the town in which plaintiff resided.

Catlin vs. Hull, 21 Vermont, page 158: "It is insisted upon, * * * that the property of Hammond, of which the plaintiff has the care, as his agent, cannot be considered as legally existing in this State, and that this is an attempt to tax property when neither the property nor the owner is within the State, and within the jurisdiction of our laws. We think, however, that this doctrine is quite too refined and artificial to be put to any practical use."

Page 159: "But it is insisted further, that provided this property is to be considered as having its actual locality in this State, yet that personal chattels, and especially debts due, having no fixed *situs*, follow the person of the owner, and are considered as being legally situate where the owner has his *domicile;* and from this it is argued that personal estates and especially debts, cannot be taxed by the State within whose jurisdiction they actually exist, if the domicile of the owner be elsewhere. It is undoubtedly true that by the general acknowledged principles of public law, personal chattels follow the person of the owner, and that upon his death they are to be distributed according to the law of his *domicile*, and in general, any conveyance of chattels, good by the law of his own *domicile*, will be good elsewhere. But this rule is merely a legal fiction, adopted from considerations of general convenience and policy, for the benefit of commerce, and to enable persons to dispose of their property at their decease, agreeably to their wishes, without being embarrassed by their want of knowledge in relation to the laws of the country where the same is situated. But even this doctrine is to be received and understood with this limitation, that there is no positive law of the country where the property is in fact, which contravenes the law of his domicile, for if there is, the law of the owner's domicile must yield to the law of the State where the property is in fact situate. We do not consider this doctrine in relation to the *situs* of personal chattels, and relating to its transfer and distribution, as at all conflicting with the actual jurisdiction of the State where it is situate, over it, or with their right to subject it, in common with other property of the State, to share the burthen of the government by taxation. Judge Story, in

his 'Conflict of Laws,' page 19, says: 'The first and most general maxim or proposition is that which has been already adverted to, that every nation possesses an exclusive sovereignty and jurisdiction within its own territory. The direct consequence of this rule is, that the laws of every State affect and bind directly all property, whether real or personal, within its territory, and all persons who are resident within it, whether natural born subjects or aliens, and all contracts made and acts done within it.' * * * Judge Story, in the same work, page 462, expressly states that the doctrine that the *situs* of personal property follows the *domicile* of the owner, is subject to this jurisdiction and right of the State, where the property is situate in fact. Chief Justice Marshall, in *M'Cullough vs. Maryland*, 4 Wheaton, 420, expressly recognizes this doctrine of dominion and sovereignty in the State, and further, that as a necessary incident to such sovereignty, and coextensive with it, is the power of taxation. Chancellor Kent also recognizes this doctrine to the fullest extent. 1 Kent, 426.

Hoyt vs. Tax Commissioners, 23 N. Y., 226, 230, *p.* 232–3: "The possession of chattels is never vacant, as may be the case in respect to land Where it is not in the hands of the owner it is usually held by some one else under some agency or trust, and the statutes which have been referred to are comprehensive enough to reach it in most cases when actually situated here, notwithstanding the foreign domicile of the general owner. All personal estate within the State, in the possession or under the control of a trustee, while the beneficial owner is a resident abroad, and in such a case, the assessment is to be against the person having the special interest or control. The actual *situs* and control of the property within the State is the condition which subjects it to taxation. The owner will of course be assessed if he resides here, and has it under his own control. If he resides in another State, the result is reached by charging his agent or trustee in the actual possession. And thus the different provisions of law which have been mentioned, appear to me to be in harmony with each other."

Page 236: "Thus we have a system apparently symmetrical and complete, according to which all personal estate, having an actual *situs* in this State, is brought within the sphere of taxation, without regard to the domicile of the owner, with only special exceptions dictated by policy of justice. And if this be the rule of taxation were the *situs* of the thing to be taxed, and the domicile of the owner are different, it is conceded that the opposite rule cannot and does not prevail. Proceeding on this rule, Louisiana and New Jersey very justly imposed a share of their public burdens on the property of the relator, situated in those States. The State of New York will do the same thing in respect to citizens of those States having property here, but it is not so unjust to its own citizens as to load them with double burdens, by proceeding on the opposite principle. Also,

I am confident there is nothing in all our legislation which affords any ground for imputing to it such inconsistency and injustice."

Page 239: "The cases which I have referred to were determined by the highest courts in five States of the Union. They appear to be entirely pertinent to the question now before us, and I am not aware of a single decision to the contrary, except the one under review. These cases not only establish a construction of statutes framed like our own, but they all assert the principles of taxation, which lie at the very foundation of the subject. See, also, Story's Confl. of laws, pp. 19–462.) My conclusion, therefore, derived, from the statutes, from these authorities, and from the reasons of a general nature which ought to influence the decision of such a question, is that the relator was not subject to taxation for his personal estate, having an actual situation in New Jersey and Louisiana."

City of Albany vs. Mekin, 3 Ind., 481: The share of the part owner of a steamboat, which runs on the Ohio and Mississippi rivers, and occasionally touches at the city of New Albany, in the course of her voyages, is not liable to be taxed under the charter of said city, merely from the fact that such part owner is a citizen of that place.

The *situs* of personal property for the purposes of taxation does not follow the domicile of the owner.

Perkins, J.: "We do not think that for the purpose of taxation, a court is authorized to apply the rule of governing the personal estate of deceased persons, which regards its *situs* as following the domicile of the owner."

Faxton vs. M'Cosh, 12 Iowa, 529: Interest of non-residents in a railroad company in this city may be taxed here.

Sprague vs. Lisbon, 30 Conn.: Machinery (being personal property) in a mill in this State, can be taxed though owned by a non-resident.

Taylor Admr. vs. St. Louis County Court, 47 Missouri, 590, *Syllabus*, 2 *Revenue—Bonds taxed according to the situs of the property and not the domicile of its owner.*—Bonds of the "Masonic Hall Association" of St. Louis, in the hands of an administrator in St. Louis, are subject to taxation in this State, although the deceased owner of the bonds, at the time of his death, resided in Illinois, and the bonds had been once assessed in that State, and were only transferred to Missouri for the purpose of auxiliary administration. The actual *situs* of personal property, and not the domicile of its owner, determines under the law of what State it shall be taxed. Section 24, page 115, Wagn. Stat., providing that real estate shall descend according to the laws of its situs, and personal property shall be distribited according to the laws of the domicile of the decedent, has no application to the case under consideration. In no sense can it be said that the property represented by these bonds was in the possession of a

foreign administrator, and it is immaterial that the bonds may have been transmitted from such foreign administrator for the purpose of auxiliary administration.

Such bonds are not exempt from local taxation on the ground that the law makes no special provision for taxing such securities. Under our law bonds are left to be taxed like other property, where they can be reached, except that if the owner resides in the State they shall be taxed in the county of his residence.—Wagn. Stat., 116, § 9.)

Bliss, J., page 600: "Our statute makes no special mention of this description of property, but provides that taxes shall be levied 'on all property, real or personal, except, &c.' * * * * * The county authorities defend their assessment, as we have seen, upon the ground that these bonds are actually within the State, and subject to its laws, while the relator claims that as personal property as especially as *choses in action* they follow the domicile of the owner, and can only be taxed at the place of such domicile. It is evident they should not be assessed in both States, though an erroneous assessment in one State will not exempt them from a correct one in the other. We have no statute specially subjecting to taxation the bonds of our corporations wherever owned, and if they are liable at all, it is because they are here protected by our laws, and subject to the juristiction of our courts.

"That the *situs* of personal property is the domicile of its owner is a fiction, though color is given to its truth by the law in relation to the distribution of personal estates. If a citizen and resident of St. Louis own a farm in Illinois, no one pretends that the farm has any different location than if the owner lived upon it. But how with the cattle in its fields and stables, and the corn in the graneries? On what principle can they be said to belong to Missouri, so long as they are upon the farm? There is this difference, they can be removed to Missouri, while the farm cannot, but until removed, their *situs* is the farm, and help to swell the wealth of the locality, they are protected by its laws, and should be subject to its burdens. The same rules should be applied to bonds and notes, though from he different nature of the property, their actual *situs* may be more doubtful. But if it be established, although not the residence of their owner, the same result should follow as to them. Thus, if money be left by a non-resident in the hands of an agent for investment and loan, the money itself, the instruments taken for it, and the various forms which it assumes, so long as they remain in the hands of such agent, are local property, and upon every principle should be subject to the public burdens imposed upon other local property of the same kind. What difference does it make in benefits derived by the owner from the protection afforded this property by the ad-

ministration of the law, whether he live near it or abroad? or what difference in the expense of such protection?

"This view has been recognized by all the courts, but I will refer to only a few cases. In Catlin vs. Hall, 21 Verm., 152, one Hammond was a resident of New York, and had placed promissory notes in the hands of the plaintiff in Vermont, as his agent, to collect, re-loan and manage for his benefit. They were assessed at the locality of the agent, and he brought suit to test the legality of the assessment, which was fully sustained by the court, upon the principle that the property was invested in the State, under the protection of the laws, and should contribute to the support of the government which protects it. In the People vs. Home In. Co., 29 Cal., 533, certain State bonds had been deposited by the defendant, a foreign corporation, as security for its liabilities, and were subjected to local taxation. The assessment was sustained, the court holding "the actual *situs* and control of the property within the State to be the condition which subjects it to taxation." The case of Hoyt vs. Commissioners of Texas, 23, N. Y., 224, arose out of an attempt to assess taxes against the owner, who was a resident of New York, upon his personal property in New Orleans. The court of appeals held the assessment as to tangible property to be illegal, but declined to give an opinion in regard to choses in action. But in the Supreme Court, in the People vs. Gardner, 51, Barb., 352, it was held that a resident of New York was not liable to be assessed and taxed at his residence, upon securities taken and held by his agents in other States. This court, so far as the question has come before us, has sustained the same view, and in St. Louis vs. Wiggins Ferry Co., 40 Mo., 580, Judge Holmes thus states the general doctrine. "The property of either a resident or non-resident is taxable here, if it be found situate within the local jurisdiction, whether it be in the hands of the owner himself or of his agents. The only question then to be determined is, whether the bonds belonging to the relator as administrator, are so located in Missouri as to be taxable here, or whether they should be assessed at the residence of the deceased. The fact that they have been once assessed at the latter place, cuts no figure for the authorities as the true *situs* cannot be thus deprived of the jurisdiction." In regard to the law governing the disposition of the property of a deceased person, our statute provides (Wagn. Stat., 115 ch. 125, § 24,) that real estate shall descend according to the laws of its *situs*, and that personal property shall be distributed according to the laws of the domicile of decedent, thus embodying the existing law, rather than declaring a new rule. The provision, it is claimed, should govern the location of the personal property of the estate, for the purpose of taxation. If so, the rule should apply to all kinds of personal property, so that cattle, horses, steamboats and building upon leased ground, that may never have been within the

jurisdiction of the State, containing the domicile of decedents, could be alone taxed at that place. But the law upon this subject has no application to the question under consideration. In fixing the rights of distributees of property, whose *situs* is changeable, and may be under one jurisdiction at one time and elsewhere at another, the law of some locality must be chosen, and it is very proper to govern its distribution by the law known to the deceased. But the principles governing the question of taxation are, as we have seen, very different, and we are only required to ascertain the actual location of the property at the time of assessment.

"Administration of so much of the estate of a non-resident as is found within our jurisdiction is auxillary, in that it becomes the duty of the administrator to submit to the representative of the estate of the domicile any balance remaining after full administration. Yet, so far as local creditors and local distributees are concerned, the administration is complete. Until such balance be transmitted the local administrator has full possession of all the property, and the foreign administrator has no right to intermeddle. In no sense can it be said to be in the possession of the foreign administrator, and it does not matter whether or not it may have been transmitted, or rather the evidence and representation of it in the shape of bonds and notes, from such administrator to the local one. When transmitted for the purpose of administration it becomes a local estate, it comes within the jurisdiction of the tribunals of the domicile of the local administrator, it seeks the protection of its laws and the enforcing process of its courts, and until the closing up of the local administration it can have no other *situs*."

People vs. Home Insurance Company, 29 Cal., 593. Personal property n California belonging to a non-resident, may be assessed to such owner, notwithstanding he is a non-resident. If personal property in this State, belonging to a non-resident, is in the possession of a trustee or agent, it may properly be assessed to the agent or trustee in possession, 23 N. Y., 225, cited and approved—*Catlin vs. Hull*, 21 Vermont, 156, and *Hoyt vs Com. Taxes*, p. 538. *Sawyer, J.*: "But it is claimed that these bonds (i. e bonds of the State of California, owned by the Home Insurance Company, a New York corporation, and deposited with a banker in California as security for persons dealing with the company in that State) are mere evidences of debt, having no intrinsic value, that they are mere representatives of a debt owned in New York; that they have no *situs* apart from the domicile of the owner, which is located without the State, and that, therefore, they do not constitute property within this State. It is true, as a general principle, that personal property follows the owner, having no *situs* apart from the owner, and is subject to the law of his domicile; but this is a fiction of law adopted for the purposes and incidents of contracts and descents. It may still, for the purposes of taxation and judicial proceedings, be affected by

the law of the place where it is in fact situate. This general principle applies to all personal property, whether corporeal or incorporeal. Story says: 'In the next place let us consider the subject of jurisdiction in regard to property. It will be unnecessary to discuss the matter at large as to personal property, since the general doctrine is not controverted, that although movables are, for many purposes, to be deemed to have no *situs* except that of the domicile of the owner, yet, this being but a legal fiction, it yields whenever it is necessary for the purposes of justice that the actual *situs* of the thing should be examined. A nation within whose territory any personal property is actually situate, has as entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there. It may regulate its transfer and subject it to process and execution, and provide for and control the uses and disposition of it, to the same extent that it may exert its authority over immovable property. One of the grounds upon which we have seen jurisdiction is assumed over non-residents, is through the instrumentality of their personal property, as well as of their real property, within the oca sovereignty. Hence it is that whenever personal property is taken by arrest, attachment or execution within a State, the title so acquired under the laws of the State is held valid in every other State, and the *same rule is applied to debts due to non-residents, which are subjected to the like process under the local laws of a State.*'—(Story on Con. of Laws, sec. 550.")

People vs. Gardner, 51 Barbour, 352: A resident of this State is not liable to be assessed and taxed here for his capital invested in loans in other States, upon securities taken and held in those States by his agents.

Whether the owner of property thus situated is liable to be assessed here, for it depends upon the question whether it can be properly and legally held to be within the State at the time of the assessment. As such property has no actual location or *situs* within the State, notwithstanding the owner resides here, it is not subject to taxation. *Catlin vs. Hall*, 21 Vermont Rep., 152, and *Hoyt vs. Commissioners of Texas*, 23 N. Y., 238, cited and approved. *Daniels, P. J.* It is clear that the property on account of which the assessment was made had no actual location or *situs* within the State. For the moneys loaned and the securities taken and held for the payment of such loans were actually in the States of Wisconsin and Illinois. So far as they were things having a substantial existence, they were so in those States, and not elsewhere. As such they were within the sole protection of the laws of those States. The validity of the agreements under which the loans were made, the protection of the securities taken for their payment, and the remedies provided for enforcing the securities, depended alike upon such laws. In neither respect did the relator derive any benefit whatever from the laws of this State. And the consid-

eration from which the right to impose taxes has been theoretically derived, has therefore no foundation for its support so far as the assessment in controversy is concerned. Under that theory the government extending the security of its protection to property is justly entitled by way of taxes upon it to its ratable equivalent of the expenses incurred for the protection afforded to it. In this instance that was not done and could not be done by the government of this State. But it was done by the government of the States in which the loans were made, and the recompense for that service should justly be returned to the authorities of such States. This State has performed nothing whatever for which such recompense can be properly demanded by its authorities. But even though the assessment may have no just theory in fact to rest upon, the learned counsel, who with very great zeal and ability argued this cause on the part of the defendants, claimed that it was legal and valid because the statute of 1851 declared that the assessment should be made for all personal estate owned by the person assessed. Although this language is general and broad enough to include all the personal estate of the person assessed wheresoever it may be situated, the court of appeals, in the case already referred to, have held that it should not be so construed, but that its terms must be so far restricted as to confine them to property within this State. The fact, therefore, that the property was owned by the relator was not alone sufficient to justify the action of the assessors. To produce that result the additional circumstance was equally essential, that the property should be within this State. Under this construction the original section contained in the revised statutes, and the second section of the act of 1851, must be read together, and then, instead of providing generally that the owner shall be assessed in the town or ward where he resides, for all personal estate owned by him, that section will provide that he shall be assessed for all personal estate owned by him within this State. When thus read, this is the plain and obvious meaning of the law.—(1 R. S. 5th ed., 905, S. 1; 908, § 5.)—In order to avoid the consequences of this exposition of the statutes, the same learned counsel very earnestly urged upon the consideration of the court, that as this property consisted of what the law denominates choses in action, being obligations of an intangible nature, it was within the State because the relator was its owner. That from its nature it must follow the person of him to whom the obligations are owing. By a legal fiction the personal estate of the owner has, for some purposes, been deemed to follow its owner. But in the adjustment of systems of taxation this fiction has been very generally rejected, on the ground that it was productive of unjust consequences, and other cases exist where for a like reason its application has been desired. As to visible and tangible personal property capable of having an actual *situs*, this fiction has not been allowed to prevail,

so as to render such property liable to taxation when it was not within this State, even though the owner was here, (the People vs. The Commissioners of Texas, 23 N. Y. Rep., 224,) and the reasoning of the judge, through which that conclusion was reached, is equally applicable to the present case as it was to that, though it was not intended to be applied to a case of this description."

The following is a brief review of the cases cited by the plaintiff in error in this part of the case:

State of Nevada vs. Earle et al., 1 *Nevada Reports*, 396. This case, rightly considered, is an authority in favor of the Pennsylvania tax, and not against it.

Here the tax was on the *chose in action*, *i. e.* on the *note itself*, secured by a mortgage on property in Nevada. The court held, that as this note belonged to a non-resident, and was actually in the possession of that non-resident in California, that it—the note—could not be taxed in Nevada, the ground taken being that the thing taxed had no tangible existence in the State of Nevada. But the court expressly declared that "each tangible piece of real or personal property within the State" might be taxed. Pennsylvania does not tax the *chose in action*, *i. e.*, the bond itself—but it taxes "tangible personal property," *i. e.*, the interest about to be paid on the bonds—which "tangible personal property" is actually "within the State," *i. e.*, in the physical custody of the treasury of the plaintiff in error, a Pennsylvania corporation.

City of Davenport vs. M. and M. R. R. Co., 12 Iowa, 541, *et seq.* This case only decides what was *the meaning* of a State statute.

And it was held that it was not the *intention* of the Legislature to impose the tax claimed by the city of Davenport. The question, whether had the tax claimed been really imposed, would it have been legal? was not before the court.

The tax was directly on the mortgage itself, which was in the custody and belonged to non-residents, and not on the interest, payable by the State corporation, and in its possession. The broad question involved in the construction of the Pennsylvania statute, did not arise in the case.

On page 546, the court say: "What property have these defendants in the mortgages given? What interest have they that could be levied upon, and sold or transferred? It is the value of the thing to the owner that the taxing power aims to reach, not that which is invisible or intangible," meaning the *chose in action*, or piece of paper called a mortgage, evidencing the debt and in the possession of the non-resident. Under the reasoning in this case, the Pennsylvania tax being on something "tangible," and actually in the treasury of the State corporation, and so capable of being

"levied upon and sold or transferred" in Pennsylvania, would be subject to taxation there.

The State vs. Ross, 3 *Zabriskie*, 519 *et. seq.* Here, too, the tax claimed was upon the *chose in action*, the bonds themselves. The fact that the owner, a resident of Georgia, was temporarily in New Jersey, did not make it lawful to tax that *chose in action*. It was held that personal chattels actually in the State, though owned by non-residents, are subject to State taxation.

Latrobe vs. Mayor, &c., Baltimore city, 19 Maryland, 20. Here also the tax claimed was levied directly upon the mortgage itself.

People vs. Park, 23 Cal., 138. Here the tax was again on the mortgage itself, and the question was in which county of the State it should be paid, whether in that of the mortgagee or in the one where the land was situated.

People vs. Eastman, 25 Cal., 603. In this case the tax claimed by Mariposa county was assessed directly on a judgment obtained there by a resident of another county. Same as *People vs. Park*.

People ex. rel. Hoyt vs. Com. of Taxes, 23, N. Y., 225. Here the tax claimed was assessed in New York against one domiciled in that State for capital invested in business in New Orleans, and respect to chattels upon his farm in New Jersey. *Held* illegal.

The reasoning in this case, pages 226 to 230, is strongly in favor of the Pennsylvania tax, and shows the fallacy of applying the legal fiction that the owner fixes the *situs* of personal property to the consideration of a question of this nature.

Ogden vs. Saunders, 12 Wheaton, 213–369. This has no possible bearing on the case.

It was held here that a discharge under a State insolvent law could not be pleaded out of the State, nor against a non-resident creditor suing in the United States Circuit Court.

Hood's Estate, 9 Harris, 106. Here testator was domiciled in Cuba at the time of his death. The Register of Wills of Philadelphia adjudged the payment of collateral inheritance tax on legacies to persons living in Philadelphia, which legacies were payable out of crops of testator's sugar plantation, situated in the island of Cuba. The register's court held that the legacies in question were not subject to collateral inheritance tax in Pennsylvania, and the Supreme Court affirmed the decision. Here neither the person nor the property was within the jurisdiction of the State.

Short's Estate, 4 Harris, 63. Here it was decided that all the personal property of a decedent domiciled in Pennsylvania was subject to a collateral inheritance tax there without regard it its actual *situs*. But this was upon the express ground that for convenience of distribution of decedent's estates, the law of the domicil governs and gives a fictitious *situs*, and this

by the universal acquiesence of all States, and for the reason that it is necessary to effect distribution according to a uniform rule.

M'Kean vs. County of Northampton, 13 Wright, 519. M'Kean was domiciled in Pennsylvania, and owned shares of stock in a manufacturing company in New Jersey. It was held,

1. That this gave him no ownership in the real and personal property of the corporation there.

2. That the shares of stock in his hands in Pennsylvania were subject to taxation here.

IV. *The Pennsylvania acts do not impair the obligation of the contract of the company with its bondholders.* The corporation pays no less interest, but a part of it is diverted to the State as a tax on the bondholder, who is made in common with the citizens of the State to pay for the value given to his property here through the grant of the franchises of the corporation and the protection afforded to it by the State. This company was reorganized in Pennsylvania under the act of Assembly of March 31, 1860, and the bonds in question were issued thereunder after March 1, 1862. [See transcript, pages 48 and 67.]

(*a*) The amendment to the Constitution of Pennsylvania, adopted in 1857, allows the Legislature to "alter, revoke or annul any charter of incorporation thereafter granted, whenever, in their opinion, it may be injurious to the citizens, * * * * in such manner, however, that no injustice be done to the corporators." If the Legislature may lawfully destroy this corporation, certainly its power to tax it and its bondholders necessarily follows. Evan an express agreement in the act of incorporation limiting the taxing power would be void.

(*b.*) At the time the corporation was re-organized, (1860,) the act under which this tax becomes payable, (April 29, 1845,) was in full force, and was notice to the future bondholders. It will be observed that the act of April 29, 1844, imposes the tax, and the act of April 30, 1864, simply regulates its collection by imposing that duty on the corporation.

(*c*) Aside from the Constitutional and statutory provisions of Pennsyl vania in force when these bonds were issued, the tax in question cannot, on general principles, be said to impair the obligation of a contract, and none of the decisions made with reference to the constitutional prohibition in this regard will sustain such a proposition. On the contrary, they fully admit the taxing power of the States.

Osborn vs. U. S. Bank, 9 Wheaton 859. The question was as to power of the States to tax the bank.

The Court said: "The foundation of the argument in favor of such right is laid in the supposition that the corporation was originated for the management of an individual concern to be founded upon contract between

individuals having private trade and private profit for its great end and principal object.

"If these premises were true, the conclusion drawn from them would be inevitable. This mere private corporation engaged in its own business with its own views, would certainly be subject to taxing power of State, as any individual would be."

[The bank was held exempt, because a public institution, a part of the Government.]

Providence Bank vs. Billings & Pittman, 4 Peters, 514. In November, 1791, the Legislature of R. I., chartered an association which had been formed to carry on a banking business, under the name of "President, Directors and Company of the Providence Bank."

In 1822, the Legislature of R. I., passed an act taxing the capital stock of the banks actually paid in.

The Providence Bank brought an action of tresspass against the officers levying the tax. It was decided in favor of defendants. But this court reversed judgment and *held*—the tax did not impair the obligation of a contract.

Page 560—The plaintiffs argued: "The charter authorizes the bank to employ its capital in banking transactions for the benefit of the stockholders. It binds the State to permit these transactions for this purpose. Any law arresting directly the operations of bank would violate this obligation and would come within the prohibition of the constitution. But as that cannot be done circuitously which may not be done directly, the charter restrains the State from passing any act which may indirectly destroy the profits of the bank. A power to tax the bank may unquestionably be carried to such an excess as to take all its profits, and still more than its profits for the use of the State, and consequently destroy the institution. Now, whatever may be the rule of expediency, the constitutionality of a measure depends not on the degree of its exercise, but on its principle. A power, therefore, which may in effect destroy the charter is inconsistent with it, and is impliedly denounced by granting it. Such a power cannot be exercised without impairing the obligation of the contract. When pushed to its extreme point or exercised in moderation, it is the same power and is hostile to the rights granted by the charter."

Ch. J. Marshall denied this proposition.

Page 561: "It would seem that the relinquishment of taxing power is never to be presumed."

Page 562: "Land, for example, has in many of the States, perhaps in all, been granted by the government. This grant is a contract, the object of which is that the profits issuing from it shall enure to the benefit of

grantee. Yet the power of taxation may be carried so far as to absorb these profits. Does this impair the obligation of a contract?"

The power of taxation operates on all the persons and property belonging to the body politic. This principle has its foundation in society itself.

Gordon vs. Appeal Tax Court, 3 Howard, 133. The corporate property of bank is separable from its franchise, and may be taxed unless there is a special agreement to the contrary.

(This was a case where the State agreed not to lay any further burthen on the banks upon condition that they made a road and paid a school tax.)

P. W. & B. R. R. vs. Maryland, 10 Howard, 393. There is no reason why the property of a corporation should be presumed to be exempted, or should not bear its share of necessary public burthens.

The court has held on several occasions that taxing power is never presumed to be relinquished, it must be expressed in *clear and unambiguous terms.*

Jefferson Branch Bank vs. Skelly, 1 Black, 436. The rule of construction is strict against the corporators, and in favor of the public, and neither the right of taxation nor any other power of sovereignty will be held to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken.

Gilman vs. City of Sheboygan, 2 Black, 510. Where a State Legislature authorizes a city to borrow money, issue bonds and tax all the property in the city to pay it, this is not a contract with the bondholders that the State shall not afterward exercise her power to modify the taxation, or exempt portions of the property from taxation.

The city under an act of the Legislature issued bonds, and it was provided that a tax should be levied upon *all* the taxable property of the city for payment of said bonds. The plaintiff in error argued that the bonds were issued and taken upon the faith of that act, and that its provisions were a contract with the bondholders.

The Legislature subsequently enacted that only the real estate should be taxed to pay said bonds and interest.

The fact that a State, by act of Legislature, has stripped herself of any portion of her sovereignty is not to be assumed, unless the language is too clear to admit of doubt.

Society for Savings vs. Coite, 6 Wallace, 606. Unless exempted in terms which amount to a contract, the privileges and franchises of a private corporation are as much the legitimate subject of taxation as any other property of the citizens, which is within the sovereign power of the State.

Affirms the decisions that the taxing power is never *presumed* to be relinquished.

Curtis vs. Whitney, 13 Wallace, 68. A statute does not necessarily im-

pair the obligation of a contract because it may affect it retrospectively, or because it enhances the difficulty of performance to one party, or diminishes the value of the performance to the other, provided that it leaves the obligation of performance in full force. A statute which requires the holder of a tax certificate, made before its passage, to give notice to an occupant of the land, if there be one, before he takes his tax deed, does not impair the obligation of the contract evidenced by the certificate, which stated that she would "be entitled to a deed of conveyance of said land in three years from that date, unless sooner redeemed according to law."

Miller, J: "Nor does every statute which affects the value of a contract impair its obligation. It is one of the contingencies to which parties look now in making a large class of contracts, that may be affected in many ways by State and National legislation. For such legislation, demanded by the public good, however it may retroact on contracts previously made and enhance the cost and difficulty of performance, or diminish the value of such performance to the other party, there is no restraint in the Federal Constitution so long as the obligation of performance remains in full force."

V. *The power to tax existing, it cannot be restrained by any court, and the prudence of its exercise is not a judicial question.*

People of New York vs. The Tax Commissioners, 2 Black, 620: "The taxing power, so far as it is reserved to the States and used within constitutional limits, cannot be controlled or restrained by this court, the purdence of its exercise not being a judicial question."

St. Louis vs. The Ferry Company, 11 Wallace, 429: "When called into activity there can be no limit to the degree of its exercise (*i. e.* the taxing power,) except what is found in the wisdom of the law making power, and the operation of those conservative principles which lie at the foundation of all free governments."

VI. The plaintiff in error contends that the officers of this corporation, not being citizens of or residents in the State of Pennsylvania, nor any of the company offices located there, they cannot be obliged to become tax collectors for the State, under the penalty of personal responsibility.

It is answered for the State:

a. That the legal entity, known as the Cleveland, Painesville and Ashtabula Railroad Company, is the creature of the Legislature of Pennsylvania, and therefore the duty in question can be imposed upon them, provided the tax itself is a lawful one.

b. The charter of the company requires a portion of its officers to be citizens of Pennsylvania. (See act of Assembly of Pennsylvania of May 5, 1854, Pamphlet Laws of 1854, pages 589 and 590.)

c. The question of the *personal responsibillty* of the officers of the company, as distinguished from the corporation itself, does not arise in this

case. The suit here is not against the officers, but against the company in its corporate capacity.

VII. *The tax on the bonds or interest thereon of the plaintiff in error is not forbidden by any provision of the Constitution of the United States, or any statute thereof.*

VIII. *The laws of most of the States are similar in this regard to those of Pennsylvania.*

F. CARROLL BREWSTER,
Attorney General.
JAMES W. M. NEWLIN,
For defendant in error.

Hedrick
No 449. — vs. — Page 53.
Hughes.

Exhibit (A).

Township 49 North of the base line Range 16 West of the 5th pr.d Meridian.

No 132.
Antony Melochs
alias
Hibernois.
200 arps - 170-14 a.

John Elkin
March 5th 1825.

Thomas Embree
March 26th 1825.

Martilla Embree
June 23rd 1827.

No 74.
John Collins
640 acres.

No 286.
Michael Boneaue
640 acres.

A. Barre & A. Steward, Sept 27 1821

B. & C.

No 31.
J. B. Gobeau
160 acres.

Judson M. Beachar
September 26. 1821.

Harrison Stapelslow
and
C. Canote
Dec. 8. 1823.

William Johnson
July 25 1827.

Obediah Tindall
July 25. 1827.

John Adams
Nov. 2. 1824.

Robert Payne
Dec. 28. 1823.

James Douglass
August 2nd 1821

Samuel M. Hughes
September 17th 1827.

Saml M. Hughes
March 25 1825.

Samuel M. Hughes
Sept 17th 1821.

No 50.
Amiable Geyon
160 acres

No 78.
Joseph Reindeau
160 acres.

Obedtiah Tindall
July 25. 1827.

No 84.
James Clemens Jr.
170-14.

John Elliot
September 15th 1821

Isaac Drake
August 31st 1821.

N. S. Buckhartt
March 19th 1825.

William Brown
Sept. 17th 1821.

N. S. Burckhartt
March 19. 1825.

N. S. Burckhartt
Aug. 28. 1821.

N. S. Burckhartt
August 28. 1821.

Jere Kingsbury
a/s of Abner Johnson.

Joseph Boggs
and
D. P. Boggs,
August 21. 1822.

Joseph Boggs
D. P. Boggs,
September 14. 1821.

James & Philip Turner
September 15. 1821.

Bay Johnson
No 354.
160 acres.

William Hawkins
Sept. 18. 1824

Martin Settle
December 12. 1823.

The Heirs of
Lindsey Carson
September 10th 1821.

John Elliot

William Brown
Sept. 17th 1821.

Heirs of
Jonathan Todd
Dec. 29th 1824.

Heirs of
Jonathan Todd
Sept. 24. 1821.

N. S. Burckhartt
August 28. 1821.

Jere Kingsbury
a/s of Abner Johnson

Jacob Kortz.
March 14. 1831

Jere Kingsbury
October 30. 1824.

Joseph Boggs
and
D. P. Boggs
September 14. 1821.

James & Philip Turner
September 15. 1821.

James & Philip Turner
September 15. 1821.

George Burroughs
March 30. 1825.

Martin Settle
April 8. 1825

Samuel M. Hughes
Oct. 5th 1826.

John Elliot
September 15th 1821.

No 195.
Louis St. Aubin
160 acres.

Reserved for
Schools

N. S. Burckhartt
Apil 8. 1825.

N. S. Burckhartt
March 19. 1825.

Reserved for
Schools.

Thomas Campbell
James Turner
Decm 8. 1823.

Thomas Campbell.
Owen Rawlings.
Decm 8. 1823.

R. Payne.
a/s of W. E. Rucker
Dec 6. 1823

R. Payne.
a/s of W. E. Rucker
Dec 8. 1823

Abraham Groom

Girard Robinson
Decm. 8. 1823.

Girard Robinson
Decm 8. 1823

John Harris.
Sept. 25. 1821.

Ambrose Moss.
Decm 8. 1823.

Samuel Ringo Jr.
January 23rd 1827.

Neal Riddle
Sept. 29 1825

Owen Rawling
Nov. 29. 1824.

Susan nah Mullins
May 3. 1827

Susan nah Mullins
Sept 20. 1821.

William Scott
a/s of J. Orson
August 13th 1821.

Reserved
Salt Spring

N. S. Burckhartt
Apl 8th 1825

N. S Burckhartt
Mar. 19. 1825.

N. S. Burckhartt
August 9. 1821.

Thomas Campbell
Sept. 21. 1822.

Thomas Campbell
Septem 12. 1821.

Owen Rawlings
Decm 8. 1823.

Girard Robinson
October 30. 1824.

Girard Robinson
Oct 30. 1824.

Philip Turner
Dec 8. 1823.

Philip Turner
Dec 8. 1823.

Martin Kuntz
Janry 10. 1826.

William Hunt
Decm 8. 1823.

David Todd
February 4th 1828.

Robert Brown
September 26th 1821.

No 449.
Lemuel Masters
160 acres.

William Scott
August 13th 1821.

Saml Jeeter.

Robert Wilds
March 30. 1825.

Samuel Jeeter

Reserved for
Schools.

Elijah Isles
Janr. 11 1823.

Elijah Isles
Sept 15 1821.

William Sybert
March 13. 1827.

Henry Knaus
Oct. 18. 1827.

Girard Robinson
March 1. 1827.

Samuel Jeeter.
August 13. 1827.

Daniel Rector
July 25 1827.

Edward Turner
June 29. 1827.

John Sowthain
February 24th 1830.

Robert Brown
September 26th 1821.

No 129.
John Lafernoit
160 acres.

Heirs of
Reuben Fugate
March 26th 1825.

Robert Wilds
March 30. 1825.

Francis Whitlock
July 3. 1827.

J. Harvie
and
A. Stewart,
September 27. 1821.

Reserved for
Schools.

Henry Gore
April 8 1825.

Henry Gore
Septem. 29 1821

John Miller
and
William Clark
Sept. 29. 1821.

David R. Drake
Sept. 27. 1821.

No 200.
A. Ruddle
170.14 acres.

Heirs of
David Mc Clain
March 30th 1825.

Heirs of
David Mc Clain
August 31st 1821.

Thomas Hickman
September 29th 1821.

Alexander Lucas
a/s of D. Crump.

James Hickman
Sept. 28. 1821.

James Allcom
March 29 1825.

Henry Knaus
August 27. 1821.

No 69.
James Reynolds
640 acres.

Andrew Hutchison
January 22. 1835.

Dan.l Rector,
Janry 17. 1835

Azor R. Anderson
Janry 19 1835

William Scott
July 26 1828.

Christopher Richardson
Sept 14. 1829.

David R. Drake
October 16. 1827.

No 509.
Resa Bowie
255.21 acres.

Heirs of
John Smith
January 31st 1827.

Thomas Hickman
September 29th 1821.

James Hickman
Sept. 28th 1821.

James Hickman
Sept. 28 1821.

James Allcom
March 29. 1825.

Henry Knaus
Nov. 25. 1826.

No 355.
Peter Loval

Thomas Allcom
Janry 17. 1829.

Thomas A. Smith
Aug. 7. 1829.

James Allcom
Dec. 3. 1829.

Charles Drake
April 15. 1831.

Charles Drake
April 15. 1831.

Jacob Baker
May 30th 1822.

John Wolfkill
May 28th 1827.

Philip W. Thompson
August 16th 1831.

No 190.
James Story
200 arpens.

Thomas A. Smith dec 30 1829

No 355.
Peter Loval
204.16.

No 267.
Hardy Rawls
425 35/100 acres.

No 25.
Lewis Sojourner
396.40.

No 238
Nathaniel Hutchison
Dec. 22. 1823.

No 54.

Peter Labonibardier.

John Wolfkill
30th March 1825.

No 1725.
William Nash
800 arpens.

No 252.
Ranson Thacker.
400 arpents.

No 146.
Daniel Stringer
640 acres.

Thomas Barnes
March 3. 1832.

No
Helen Cummins
640 acres.

Zacharias Benson
Jan 17. 1835.

No 53.
Thomas Y. Horseley
640 acres.

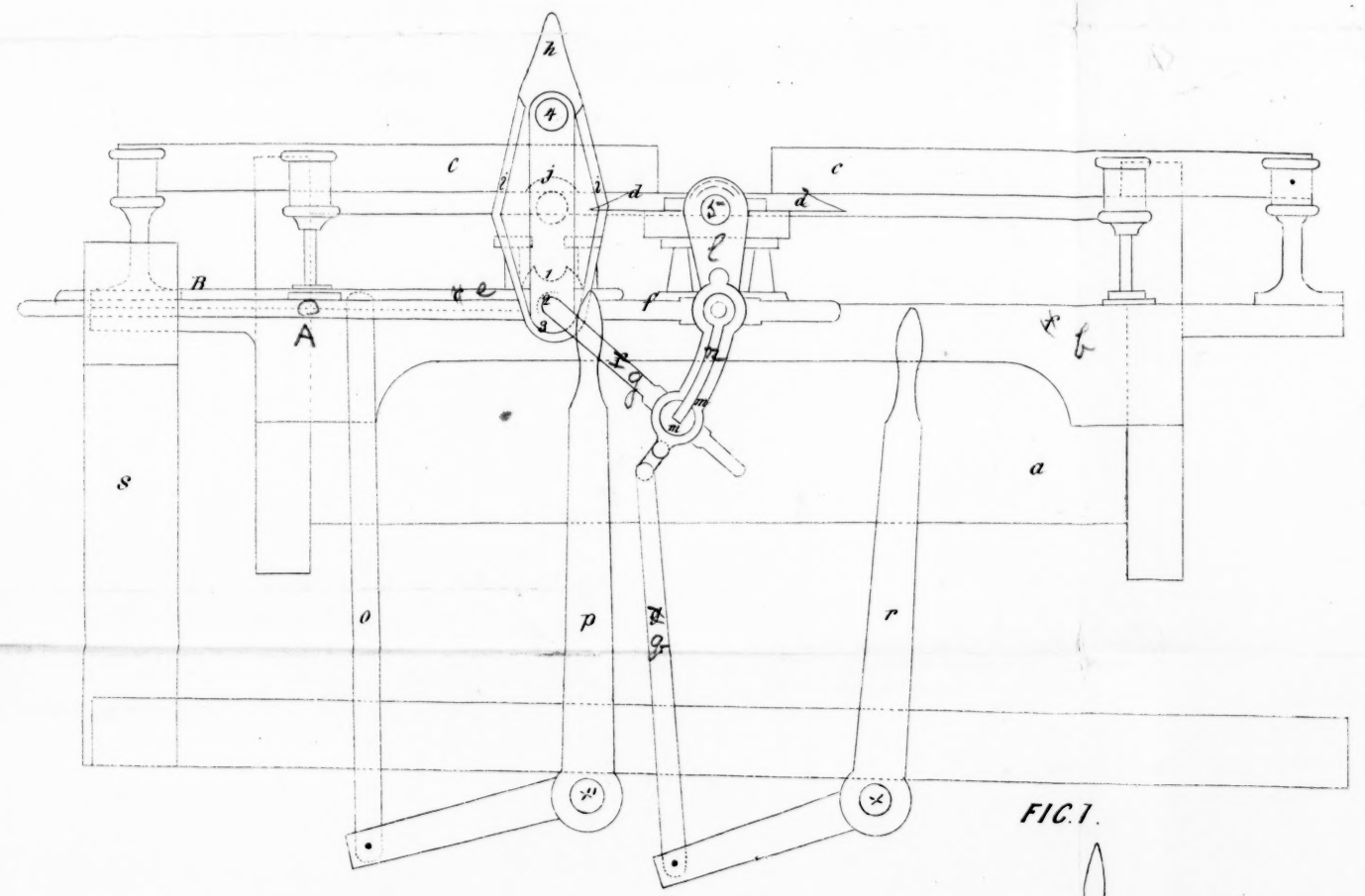
William Clark
640 acres.

No 23.
J. B. Latremouto
640 acres.

* N. Fel half of Section 3 Entered September 27. 1822.

Rees vs. Gould. Page 61.

No 446.



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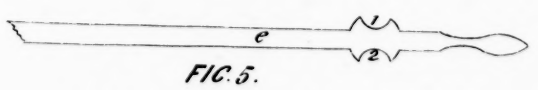

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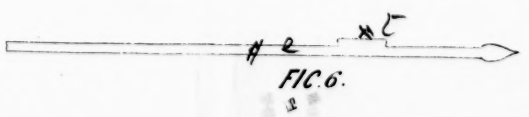

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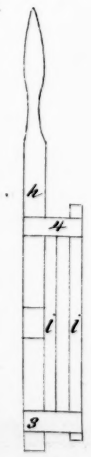

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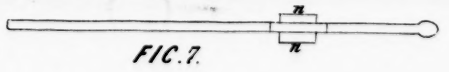

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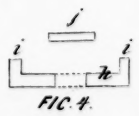

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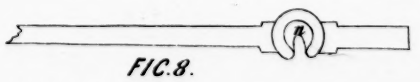


FIC. 8.

James F. Johnston

George P. Steck

FIC. 9.

FIC. 10.

Wm L. Gold

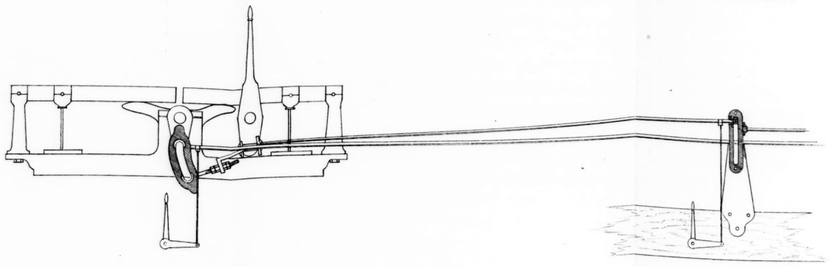
Correctly attached

Arthur L. McInteer Atty

ECHO.

William L. Gold vs. James Rees

No. 113, Nov' Term 1866. — U.S. Circuit Court, Western District of Pa.

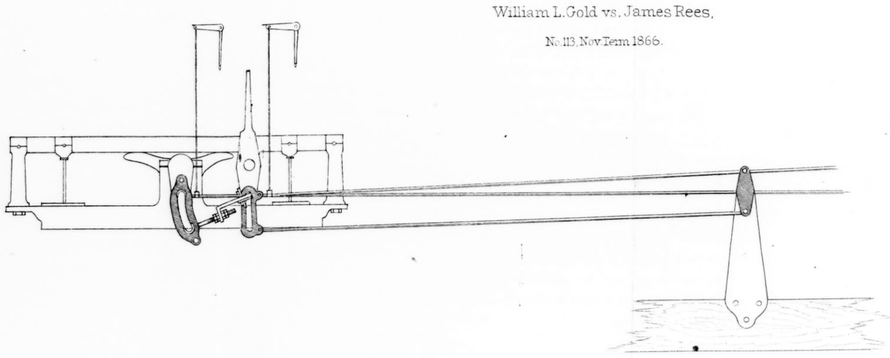


Nº 446, REES vs. GOULD, PAGE 50.

HARRIET.

William L. Gold vs. James Rees,

No. 113, Nov. Term 1866.

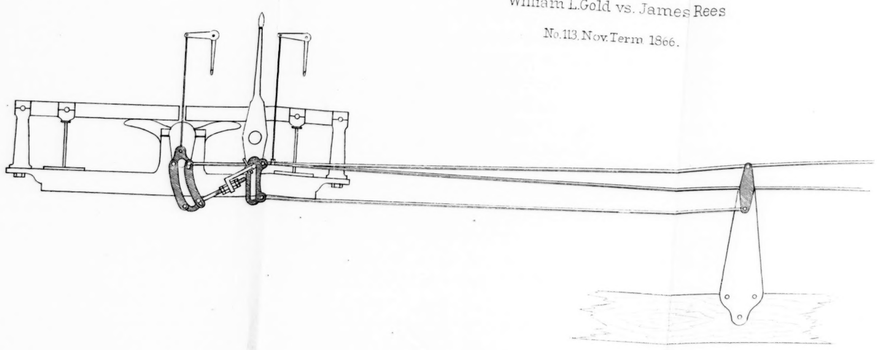


Nº 446, REES vs. GOULD, PAGE 50.

LAURA.

William L. Gold vs. James Rees

No. 113, Nov. Term 1866.



Right hand Fork of Ten Mile Creek.

N°8 T. Laidley 1000 acres

N°7. Thomas Laidley 2000 acres

N°6. Thomas Laidley 2000 acres

N°5. Thomas Laidley 2000 acres

N°4. T. Laidley 2000 acres.

N°3. Thomas Laidley 2000 acres.

N°2. Thomas Laidley 2000 acres

N°1. Thomas Laidley 2000 acres.

N°9 T. Laidley 1000 acres.

N°10. Thomas Laidley 2000 acres

N°11. Thomas Laidley 2000 acres.

N°12. Thomas Laidley 2000 acres.

N°13. Thomas Laidley 2000 acres

N°14.

N°15. Thomas Laidley 2000 acres.

N°36. Thos. Laidley 300 acres.

N°35. Thos. Laidley 1200 acres.

John Lyne, 715 acres.

William Barkley 300 acres.

N°34. Thomas Laidley 2000 acres.

Jesse M°Intire 398 acres.

Thomas Laidley 2000 acres.

James Hannah 382 acres.

N°22. Thomas Laidley 2000 acres.

N°21. Thomas Laidley 2000 acres.

N°20. Thomas Laidley 2000 acres.

N°19. T. Laidley 2000 acres.

N°9.

N°18. Thos. Laidley 2000 acres.

N°17. Thos. Laidley 2000 acres.

N°16. T. Laidley 2000 acres.

N°23. Thomas Laidley 2000 acres.

N°24. Thomas Laidley 2000 acres.

N°5.

N°4.

N°6.

N°7.

N°8.

N°12.

N°13.

N°30. Thomas Laidley 2000 acres.

N°29. T. Laidley

N°28. Thos. Laidley 2000 acres.

N°27. Thos. Laidley 2000 acres.

Jabez Bacon N°5 1000 acres.

Jabez Bacon N°4 1000 acres.

J. Bacon N°6. 1000 acres.

J. Bacon N°15. 1000 acres.

J. Bacon N°16. 1000 acres.

Jabez Bacon N°18.

Bacon 922 acres.

C. Bagwell 386 acres.

C. Stuart

Robinson

Uriah Thompson et al
vs
Charles Stuart et al

Plat & Report

No 1.

The Costs of Suit
Charged to Plaintiffs — $163.45
Charged to Defendant $246.00

Right hand Fork of Ten Mile Creek

Left hand Fork of Ten Mile Creek

N.° 7. Thomas Laidley 2000 acres

N.° 6. Thomas Laidley 2000 acres

N.° 5. Thomas Laidley 2000 acres

N.° 4. T. Laidley 2000 acres

N.° 3. Thomas Laidley 2000 acres

N.° 2. Thomas Laidley 2000 acres

N.° 1. Thomas Laidley 2000 acres

Richard Mason 927 acres

N.° 10. Thomas Laidley 2000 acres

N.° 11. Thomas Laidley 2000 acres

N.° 12. Thomas Laidley 2000 acres

N.° 13. Thomas Laidley 2000 acres

N.° 14.

Jesse McIntire 398 acres

Thomas Laidley 2000 acres

James Hannah 332 acres

N.° 15. Thomas Laidley 2000 acres

N.° 36. Thos. Laidley 300 acres

N.° 35. Thos. Laidley 1200 acres

John Lynch 715 acres

William Barkley 300 acres

N.° 20. Thomas Laidley 2000 acres

N.° 19. T. Laidley 2000 acres

N.° 9.

N.° 18. Thos. Laidley 2000 acres

N.° 17. Thos. Laidley 2000 acres

N.° 16. T. Laidley 2000 acres

N.° 34. Thomas Laidley 2000 acres

N.° 7.

N.° 25. T. Laidley 2000 acres

N.° 26. Thos. Laidley 2000 acres

N.° 27. Thos. Laidley 2000 acres

N.° 28. Thos. Laidley 2000 acres

N.° 29. T. Laidley 2000 acres

N.° 30. Thomas Laidley 2000 acres

Jabez Bacon N.° 5 1000 acres

Jabez Bacon N.° 6 1000 acres

J. Bacon N.° 15. 1000 acres

J. Bacon N.° 16. 1000 acres

Jabez Bacon N.° 4 1000 acres

Jabez Bacon N.° 7 1000 acres

J. Bacon N.° 14 1000 acres

J. Bacon N.° 17.

Jabez N.° 19. Bacon 922 acres

Jabez N.° 20 922 acres

C. Bacon 336 acres

C. Shuttleworth

Robinson

Big Branch

2 Hickories

Maple

Beech (Round Hickory)

Grant Oak Corner

Spicy Run

Camp Run

Rock Camp Run

Cross Run

Flag Run

Brushy Fork

Laurel Creek

Stump Run

marked trees refered to in W. R. Bennetts Report

Uriah Thompson et al vs Charles Shuttleworth et al

No 1.

Plats & Report

Sup: Court W. D. 1870 Dec Term No 221 Shuttleworth, Thompson et al

Map filed by agreement of Counsel

Filed 11th March 1871

Fee Costs of Survey

Charged to Plaintiffs - $163.45

Charged to Defendant $246.00

Deft's Ex. of Assistants $24.00

4

No 1.

Fee Costs of Surv
Charged to Plaintiffs - $ 163.45
Charged to Defendant $ 246.00
Depᵗ & Assistants $ 24.00
$ 433.45

Returned, filed, in the Clerks Office of the United States for the District of West Virginia at Clarksburg this 19th day of August 1867.

Test Jasper Y. Moore, Clk
U.S.D.C. for D.W.Va.

United States of America
District of West Virginia Sct.

I, Jasper Y. Moore, Clerk of the District Court of the United States for the District of West Virginia, do certify, that the foregoing is a plat and report of Survey made by Daniel Sherwood under the Order of the Court in the case of Uriah Thompson et-als. against Charles Shuttee, et-als. lately depending in said Court at Clarksburg in said District, referred to in the defendants 4th Bill of Exceptions in said Cause.

Jasper Y. Moore, Clerk
D.C. U.S. for D.W.Va.

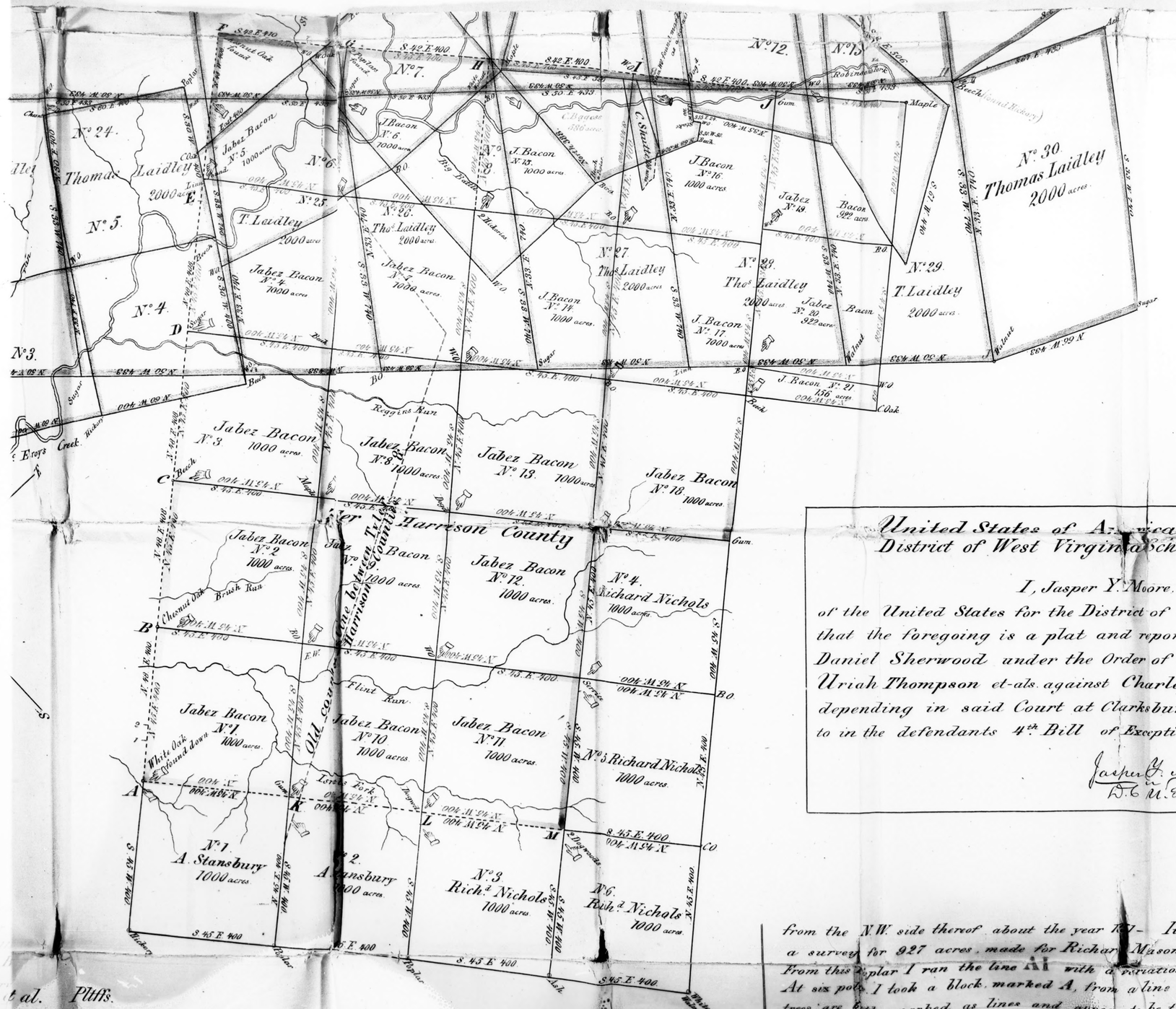
Uriah Thompson et al. Pltffs.
vs. In Ejectment,
Charles Shutte et al. Deffts.

To the Hon. John J. Jackson, Judge of the U.S.D.C. for the D. of West Virginia.

In pursuance of an order of said Court in the above Cause the undersigned after giving due notice to the parties, by their attorneys, proceeded on the 5th day of June, and the 8th day of August 1865 to Survey the land in controversy.

At the instance of the Plaintiffs by their attorney, I began at the point "A" on the bank of a run, at a white oak (now down) claimed as the beginning corner to Survey No 1 of 1000 acres, made for Jabez Bacon on the 12th day of July, 1786 and ran thence all the dotted lines shaded yellow, viz. AB, BC &c. to F, and from F the dotted line to J. These lines are marked in various places and the

from the N.W. side thereof about the year 17[illegible]. It had also been anciently marked on the
a survey for 927 acres, made for Richar[illegible] Mason in 1785, and had been blocked a num
From this Poplar I ran the line AI with a deviation in the course of 1½° to the [illegible] from the
At six poles I took a block marked A, from a line tree, and at about [illegible] poles, took block mark
trees are both marked as lines and appear to be the right age to suit the line of the Mason
and anciently marked. At 180 poles from the said Poplar at white oak stump at letter
to me by the said Elisha Hall as the Eastern corner of the said Mason Survey. This stum
tween Isaac's creek and the Right-hand fork of Ten Mile creek about one mile westwa
I found what I supposed to be a part of the body of said tree cut from the said stump which
and taking a block therefrom, found it to correspond in appearance with the age
the last mentioned W.O. stump in the proper direction for the Mason Survey. I found
Bearing about S. 40 W. - Returning to the Poplar at letter A first mentioned. I ran
the reverse course of the second call of 77



No 1.

Shutte
vs.
Thompson et al

Map filed by agreement
& recd.

Filed 11th March 1871.

Fee Costs of Survey
Charged to Plaintiffs — $163.45
Charged to Defendant $246.00
Def'ts. of Assistants $24.00
$433.45

Returned & filed, in the Clerk's Office of the United States for the District of West Virginia at Clarksburg this 19th day of August 1867.

Test Jasper Y. Moore, Clk
U.S.D.C. for D.W.Va.

United States of America
District of West Virginia Sct.

I, Jasper Y. Moore, Clerk of the District Court of the United States for the District of West Virginia, do certify, that the foregoing is a plat and report of Survey made by Daniel Sherwood under the Order of the Court in the case of Uriah Thompson et-als. against Charles Shuttee, et-als. lately depending in said Court at Clarksburg in said District, referred to in the defendants 4th Bill of Exceptions in said Cause.

Jasper Y. Moore, Clerk
D.C.U.S. for D.W.Va.

et al. Plffs.
In Ejectment,
Defts.

To the Hon. John J. Jackson, Judge of the U.S.D.C. for the D. of West Virginia.

Said Court in the above Cause the undersigned after giving due notice to the parties, by their
day of June, and the 8th day of August 1865 to Survey the land in controversy.
Plaintiffs by their attorney, I began at the point "A" on the bank of a run, at a white oak (now down) claimed
from the N.W. side thereof about the year 17[illegible]. It had also been anciently marked on the East side to suit the calls of
a survey for 927 acres, made for Richard Mason in 1785, and had been blocked a number of years ago on that side.
From this Poplar I ran the line A1 with a variation in the course of 1½° to the right from the calls of Mason said Survey (S. 72½ E.
At six poles I took a block, marked A, from a line tree, and at about poles took block marked B from another line tree. These
trees are both marked as lines and appear to be the right age to suit the line of the Mason Survey. I found this line well
and anciently marked. At 180 poles from the said Poplar at white oak stump at letter 1 on the diagram was shown
to me by the said Elisha Hall as the Eastern corner of the said Mason Survey. This stump is on the Top of the ridge be-
tween Isaac's creek and the Right-hand fork of Ten Mile creek about one mile westward from the forks of said creek.
I found what I supposed to be a part of the body of said tree cut from the said stump which had been anciently marked,
and taken a block therefrom, found it to correspond in appearance with the age of the line trees blocked. From
the last mentioned W.O. stump in the proper direction for the Mason Survey. I found an anciently marked line tree
Bearing about S. 40 W. — Returning to the Poplar at letter A first mentioned. I ran with a variation of ½° to the right
Beard Mason's Survey

S. 45 E. 400 — Poplar — S. 45 E. 400 — Oak — White Walnut

Uriah Thompson et al. Pltffs.
vs. } In Ejectment,
Charles Shutte et al. Defts.

To the Hon. John J. Jackson, Judge of the U.S.D.C. for the D. of West Virginia.

In pursuance of an order of said Court in the above Cause the undersigned after giving due notice to the parties, by their attorneys, proceeded on the 5th day of June, and the 8th day of August 1865 to Survey the land in controrersy.

At the instance of the Plantiffs by their attorney, I began at the point "A" on the bank of a run, at a white oak (now down) claimed as the beginning corner to Survey No.1 of 1000 acres, made for Jabez Bacon on the 12th day of July, 1786 and ran thence all the dotted lines shaded yellow, viz. AB, BC &c. to F, and from F the dotted line to J. These lines are marked in various places and the blocks taken, from marked line trees at the points designated by the red figures 1, 2, 3 &c. on the diagram – the numbers on the blocks corresponding with the Numbers on the lines, thus, Block No.1, was taken at the red figure 1 on line AB, and so throughout. The white oak at A is down and so much decayed that no marks could be found. At E, found a Linn, ald marked as a corner on S.W. S.E. & N.E. sides, The tree is so much decayed, that no Block could be obtained showing the ax mark. At F. found a Chestnut oak marked on the S.E. & S.W. sides but did not block it. At G. found two Poplars standing, marked as corner trees on the N.W, S.W and S.E. sides, did not block them. The marks appear old. Found no other corners on the dotted lines which are all that I ran of the Bacon Surveys. The land is improved at D & H. – From the white oak at A, ran to M on Surveys Nos 1 & 2, made for A. Stansbury. No.3, made for Richard Nichols, found some line trees marked but no corners. Took Block No.9, at red figure 9, on line AK The plat shaded red, is a tract of 586 acres granted to Caleb Boggess on the day of The small plat shaded solid red, represents the 100 acres claimed by the Defendant Shutte.

The plats shaded Green, and numbered from 3 to 13, are the lands known as the Leatherman connection of Surveys, and are laid down from Plats, after being carefully connected with the Bacon lots, as laid down by actual measurement.

The courses of the Yellow dotted lines are laid down on the diagrams, as I found them on the ground. – The difference of Variation being about 3°. – The distances differ a few poles on some of the lines from the calls of the patents.

In pursuance of an order for additional Surveying, made in this cause on the day of March, 1866. I proceeded on the 31 day of July, 1866, to execute the same, after giving due Notice to the Counsel for the parties. I went to a Poplar, represented at letter — A — on the plats, situate between the forks of Ten mile creek, about 14 miles from the forks of said creek and about a due west course therefrom, about fifty poles from a road and the lower end of William Hustead's improvement. Shown to me by Elisha Hall, sen., William Hustead and John R. Boggess, as a corner of Thomas Laidley's Connection of surreys and of his Lot No. 1 Containing 2000 acres – I found the said Poplar properly marked as a corner tree to suit the calls or bearings of the said Lot on the N.W. and S.W. sides, & Having taken from the Office of the Court the block, marked letter M., which by the report of John R. Boggess, Surveyor in the cause of John Hadden et al, vs. John Talkington, and the block itself purported to have been taken from this tree in August 1851. I examined the cut in said tree, and compared the said block with it, and found that the block had certainly been taken

From this Poplar I ran the line AI with a variation in the course of ½ a
At six poles I took a block, marked A, from a line tree, and at about poles, took block N
trees are both marked as lines and appear to be the right age to suit the line of the Mas
and anciently marked. At 180 poles from the said Poplar at white oak stump at let
to me by the said Elisha Hall as the Eastern corner of the said Mason Survey. This st
tween Isaac's creek and the Right-hand fork of Ten Mile creek about one mile wes
I found what I supposed to be a part of the body of said tree cut from the said stump w
and taking a block therefrom, found it to correspond in appearance with the
the last mentioned W.O. stump in the proper direction for the Mason Survey. I foun
Bearing about S. 40 W. – Returning to the Poplar at letter A first mentioned. I ra
the reverse course of the second call of Thomas Laidley's Survey No 1, and the first cal
S. 60½ W., I found this line well and anciently marked, some of the marks appear
date of the surveys – At a few poles beyon the distance called for (viz at 150 poles) at lett
and John R. Boggess a place near the rock Lick, about 50 poles North from Katy Swigers house, as ha
Decd, one of the chainbearers who assisted in the making of the said Surveys for Thomas La
of the corner trees thereof had been made. We then made a connection with the place nea
by Isaac Smith as that of a reputed Gum corner specially refered to by Wm R. Bonnett
Smith vs P.H. Wolff and Arthur Cowan, and after this made connection with a pl
shown by Isaac Smith & Manly Morris as being that where two line trees anciently ma
side of the Survey of 500 acres, made for William Barkley formerly stood, specially refered to
connected with my running of the Bacon lands as claimed by and laid down for t
I went again to the Poplar at A and ran the N.E. lines of lots Nos 1, 2, 3 & 4 of th
between the said Laidley's Lots Nos 4 & 5, and 12 & 13 to C. I also ran the Laidley lines,
DH, HG, HJ, JK *and from* **A** *by* **E** *to* **D** *nearly all of which appear to be well and*
marks appearing to be about 64 or 65 years old. Near to **B**. *I found a well marked li*
of the right age for the Laidly Surveys. At **M** *I found a Sugar tree anciently marke*
to suit the Laidly lines as laid down from that point – At **D, N, H & L** *I found the corne*
points, Which trees were anciently marked as corner trees to suit the Laidly lines as la
The tracts shaded Pea Green in Laidley's Lot No 14, represent the lands owned by the par
The different Surveys made for Thos Laidly, The Survey for John Lyne, the Survey for Willi
Mason are laid down adjoining each other according to their calls, from the places
ative positions to the tracts of land granted to Jabez Bacon (shaded yellow) as claime
made for Thos Laidly are represented on the Map by the lines shaded Blue. –
Mason by the lines, shaded orange. The courses and distances specified on the plots are t
creek and the Forks thereof, Isaac's creek, Rock Camp run and Grass run are tak
Surveys already mentioned as they were by Wm R. Bennett and John R. Boggess in
reports mentioned and as far as my observation extends correctly. – The red lot
line between Harrison and Tyler Counties —

Respect fully Submit

S. 45 E. 400

S. 45 E. 400

Poplar

White Walnut

Pltffs.

ectment,

Defts.

To the Hon. John J. Jackson, Judge of the U.S.D.C. for the D. of West Virginia.

Court in the above Cause the undersigned after giving due notice to the parties, by their
of June, and the 8th day of August 1865 to Survey the land in controversy.
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being carefully connected with the Bacon lots, as laid down by actual measurement.
e lines are laid down on the diagrams, as I found them on the ground. – The difference
The distances differ a few poles on some of the lines from the calls of the patents.

For additional Surveying, made in this cause on the day of March, 1866. I proceeded on
execute the same, after giving due Notice to the Counsel for the parties. I went to a Poplar,
on the plats, situate between the forks of Ten mile creek, about 1¼ miles from the
nt a due west course therefrom, about fifty poles from a road and the lower end of
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and compared the said block with it and found that the block had certainly been taken

From this Poplar I ran the line AI with a variation in the course of ½° as
At six pole I took a block, marked A, from a line tree, and at about poles took block marked B from another line tree. These
trees are both marked as lines and appear to be the right age to suit the line of the Mason Survey. I found this line well
and anciently marked. At 180 poles from the said Poplar at white oak stump at letter I on the diagram was shown
to me by the said Elisha Hall as the Eastern corner of the said Mason Survey. This stump is on the Top of the ridge be-
tween Isaac's creek and the Right-hand fork of Ten Mile creek about one mile westward from the forks of said creek.
I found that I supposed to be a part of the body of said tree cut from the said stump which had been anciently marked,
and taking a block therefrom, found it to correspond in appearance with the age of the line trees blocked. From
the last mentioned W.O. stump in the proper direction for the Mason Survey I found an anciently marked line tree
Bearing about S. 46 W. – Returning to the Poplar at letter A first mentioned. I ran with a variation of ½° to the right
the reverse course of the second call of Thomas Laidley's Survey No. 1, and the first call of the said Richard Mason's Survey
S. 60½° W., I found this line well and anciently marked, some of the marks appearing to be old enough to suit the
date of the surveys – At a few poles beyon the distance called for (viz. at 750 poles) at letter E. I was shown by Isaac Smith
and John R. Boggess a place near the rock Lick, about 50 poles North from Katy Swiger's house, as having been shown to them by John Norbert
Dec'd, one of the chainbearers who assisted in the making of the said Surveys for Thomas Laidly as about the place where one
of the corner trees thereof had been made. We then made a connection with the place near the letter O on the plots shown
by Isaac Smith as that of a reputed Gum corner specially refered to by Wm. R. Bennett, Dec'd Surveyor in the case of Isaac
Smith vs. D. H. Wolff and Arthur Cowan, and after this made connection with a place near the line on the plot
shown by Isaac Smith & Manly Morris as being that where two line trees anciently marked to suit the line on the South
side of the Survey of 500 acres, made for William Barkley formerly stood, specially refered to in the report of Bennett. I then
connected with my running of the Bacon lands as claimed by and laid down for the Plaintiffs.
I went again to the Poplar at A and ran the N.E. lines of lots Nos 1, 2, 3 & 4 of the said Laidley Surveys to B. These
between the said Laidley's Lots Nos 4 & 5, and 12 & 13 to C. I also ran the Laidley lines, as laid down on the diagram DC,
DH, HG, HJ, JK and from A by E to D nearly all of which appear to be well and anciently marked, most of the line
marks appearing to be about 64 or 65 years old. Near to B. I found a well marked line tree which seemed by blocking
of the right age for the Laidly Surveys. At M I found a Sugar tree anciently marked as a corner tree, the marks bearing
to suit the Laidly lines as laid down from that point – At D, N, H & L I found the corner trees marked on the plots at these
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The tracts shaded Pea Green in Laidley's Lot No. 14, represent the lands owned by the parties indicated in the plots.
The different Surveys made for Thos. Laidly, The Survey for John Lyne, the Survey for William Borkley and the Survey for R.
Mason are laid down adjoining each other according to their calls, from the places already specified, and in their rel-
ative positions to the tracts of land granted to Jabez Bacon (shaded yellow) as claimed by the Plaintiffs – The Surveys
made for Thos. Laidly are represented on the Map by the lines shaded Blue. – The Surveys for Lyne, Barkley and
Mason by the lines, shaded orange. The courses and distances specified on the plots are those called for in the Surveys, Ten Mile
creek and the Forks thereof, Isaac's creek, Rock Camp run and Grass run are laid down with reference to the
Surveys already mentioned as they were by Wm. R. Bennett and John R. Boggess in the Plots which accompany their
reports mentioned and as far as my observation extends correctly – The red dotted lines represent the old County
line between Harrison and Tyler Counties.

Respect fully Submitted

David Shreeves

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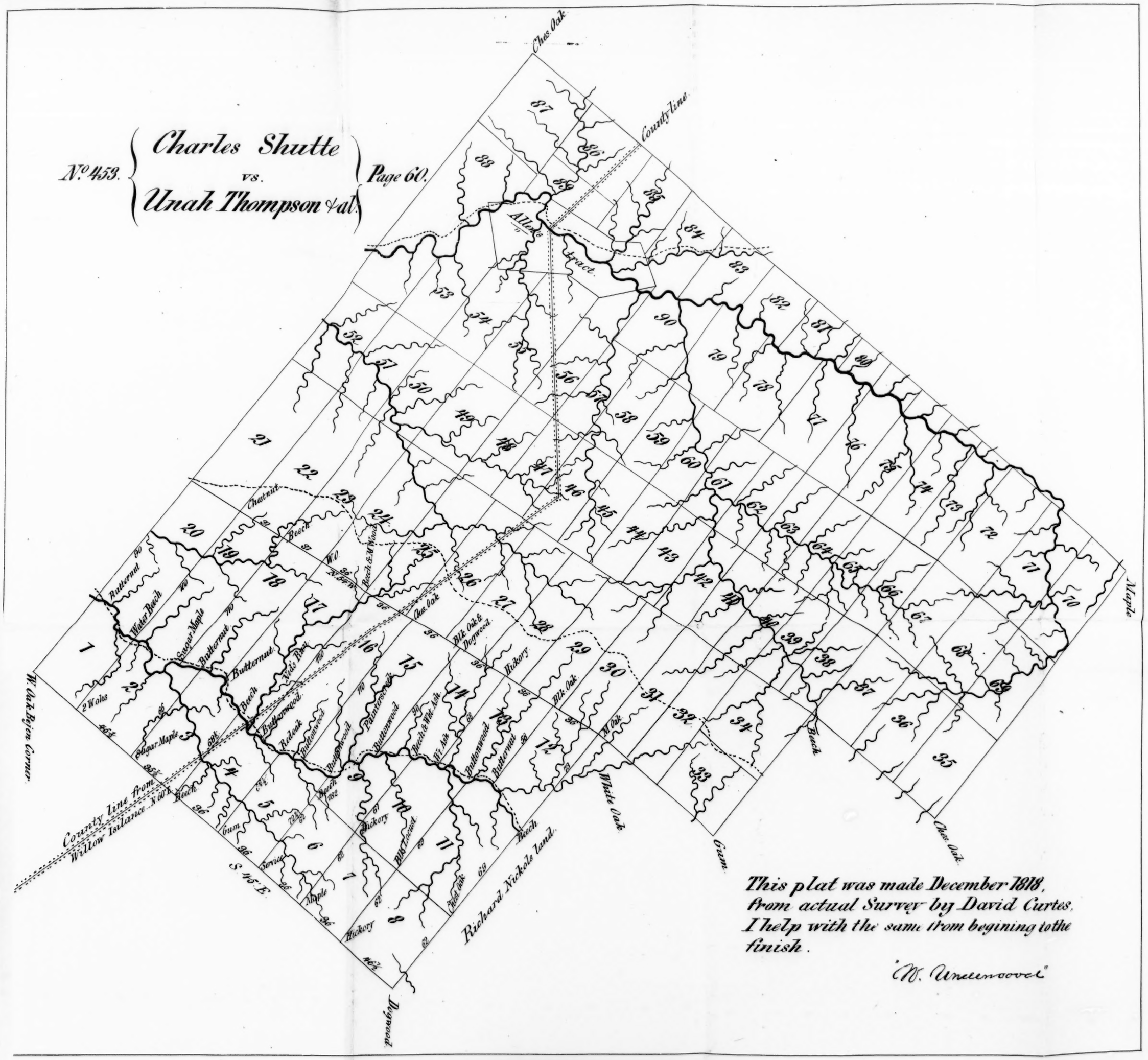

This plat was made December 1818, from actual Surrey by David Curtes. I help with the same from begining to the finish.

"W. Unreenoovel"